# Missouri Attorney General's Opinions - 1997

| Opinion | Date | Topic | Summary |
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| 45-97 | Jan 10 | COLLECTOR'S DEEDS.<br>DELINQUENT TAX SALES. | Pursuant to Section 140.260, RSMo 1994, (1) the land held by the county-appointed trustee should be sold by the method that provides the maximum amount available for distribution to the taxing authorities, (2) each lot may be sold separately or the land may be sold in tracts, and (3) the county is not responsible for subdivision assessments levied against the land during the time the land is held by the trustee. |
| 60-97 | Oct 27 | ASSESSORS.<br>COUNTY BOARD OF EQUALIZATION.<br>COUNTY COLLECTOR.<br>OMITTED PROPERTY.<br>PROPERTY TAX.<br>STATE TAX COMMISSION.<br>TAXATION - OMITTED PROPERTY.<br>TAX RECEIPTS. | With regard to a third class county 1) where tangible personal property has not been assessed or taxed in the previous year or years, there is no authority for the assessor or other county officials to place the property on the books in order to assess and tax for the omitted year or years, and 2) pursuant to Section 301.025, RSMo, as amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 316, 89th General Assembly, First Regular Session (1997), if tangible personal property was assessable by a county for a certain tax year, but was not assessed during that tax year, the county collector, upon request, is to certify that no taxes were due for that tax year and send that statement to the person making the request. |
| 75-97 | Jan 10 | CITY LIBRARIES.<br>LIBRARIES.<br>LIBRARY FUNDS. | Among the permitted expenditures from the fund created by Section 182.260, RSMo 1994, are: 1) building repairs, 2) heating and air conditioning improvement and replacement, 3) equipment for building security, 4) salaries for maintenance and security staff, 5) the purchase of real estate to be used for a library, 6) feasibility studies for property proposed to be purchased for a library, 7) upkeep and improvement of grounds and parking areas at the library site, 8) furniture such as tables and chairs, 9) office equipment such as file cabinets, 10) display racks and bookshelves, and 11) a projection system and slide projector for use in the library. |
| 80-97 | Jan 6 | LEGAL NOTICES.<br>LEGAL PUBLICATION.<br>NEWSPAPERS. | A newspaper which has been admitted to the post office as "periodicals" satisfies the requirement of Section 493.050, RSMo 1994, that the newspaper "shall have been admitted to the post office as second class matter." |
| 82-97 | Jan 10 | CITIES, TOWNS AND VILLAGES.<br>CITY RECORDS.<br>PUBLIC RECORDS. | A city council member of a third-class city should have access to the minutes of a meeting of the city council of which she is a member, where she was absent from that meeting, and where the meeting was closed pursuant to Section 610.021(3), RSMo Supp. 1995. |

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| | | RECORDS.<br>SUNSHINE LAW. | |
| 86-97 | June 10 | COUNTIES.<br>COUNTY OFFICIALS.<br>COUNTY EMPLOYEES' RETIREMENT SYSTEM.<br>RETIREMENT. | A member of the County Employees' Retirement System who is receiving retirement benefits from the system is not an "active member" as that term is used in Section 50.1130, RSMo 1994, and is not entitled to the death benefit provided by that section. |
| 91-97 | Jan 20 | APPROPRIATIONS.<br>COMPENSATION.<br>GENERAL ASSEMBLY.<br>STATE OFFICERS. | If the General Assembly appropriates less money for the compensation of officials than the compensation shown in the Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", those officials are to be paid the lesser amount appropriated by the General Assembly rather than the amount shown in the Compensation Schedule. |
| 92-97 | Feb 17 | COMPENSATION.<br>CONSTITUTIONAL LAW.<br>GENERAL ASSEMBLY.<br>STATE OFFICERS. | If the General Assembly disapproves by concurrent resolution the November 30, 1996, Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", Article XIII, Section 3 of the Missouri Constitution does not prohibit those officials listed in the Compensation Schedule from receiving compensation after July 1,1997. |
| 94-97 | June 10 | COUNTIES.<br>COUNTY EMPLOYEES.<br>NEPOTISM.<br>SHERIFFS. | A sheriff of a third class county appointed to complete the term of office of the previous sheriff who died does not violate Article VII, Section 6 of the Missouri Constitution, the nepotism provision, if he retains as a deputy sheriff his son who had been appointed as a deputy by the previous sheriff. |
| 101-97 | Mar 3 | INITIATIVES. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo 1994, of the sufficiency as to form of an initiative petition relating to the amendment of Article VI of the Missouri Constitution by adopting one new section to be known as Section 34. |
| 104-97 | Mar 13 | NEPOTISM.<br>UNIVERSITY OF MISSOURI. | The son of the head football coach at the University of Missouri may be appointed as an assistant football coach at that school without violating Article VII, Section 6 of the Missouri Constitution, the nepotism provision, when the head football coach is not involved in the hiring process. |
| 106-97 | Mar 24 | INITIATIVES. | Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo 1994, regarding an initiative petition relating to the amendment of Article VI of the Missouri Constitution by adopting on new section to be known as Section 34. |
| 126-97 | Aug 15 | ABORTION.<br>PHYSICIANS. | Under current Missouri law a person performing an abortion by partially vaginally delivering a living fetus before intentionally killing the |

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| | | | infant and completing the delivery may be charged with second degree murder under Section 188.035, RSMo 1994. |
| 127-97 | Aug 28 | CONCEALED WEAPONS.<br>POLICE. | A law enforcement officer, authorized by Section 70.820, RSMo, as amended by Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills Nos. 69 & 179 and House Committee Substitute for House Bill No. 669, 89th General Assembly, First Regular Session (1997) to arrest certain persons at any place within this state, is authorized to carry a concealed weapon at any place within this state. |
| 129-97 | July 22 | SCHOOLS.<br>SCHOOL BOARD MEETINGS.<br>SUNSHINE LAW.<br>VOTES/VOTING. | (1) The vote by a school board to hire, fire, promote or discipline an employee of the school district which vote must be made available to the public pursuant to Section 610.021(3), RSMo Supp. 1996, should disclose how each member of the school board cast his or her vote, and (2) the school board need not disclose the information which was considered by the board prior to the vote being taken. |
| 137-97 | Aug 26 | ASSESSORS.<br>COMPENSATION.<br>TERM OF OFFICE. | A county assessor commencing a term of office on September 1, 1997 whose compensation is based on Section 53.082, RSMo, is entitled to any additional compensation resulting from the enactment of Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Bill No. 11, 89th General Assembly, First Regular Session (1997) beginning September 1, 1997. |
| 145-97 | Sept 5 | CRIMINAL LAW.<br>POLICE.<br>POLICE RECORDS.<br>SHERIFFS.<br>SUNSHINE LAW. | Pursuant to subsection 3 of Section 566.617, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 56, 89th General Assembly, First Regular Session (1997), a local law enforcement agency shall provide to any person upon request a complete list of the names and addresses of sex offenders registered within such agency's jurisdiction as well as the crime for which each offender was convicted. |
| 153-97 | Sept 29 | BALLOTS.<br>REFERENDUM. | Review and approval pursuant to Sections 116.332 and 116.334, RSMo, of the sufficiency as to form regarding a proposed law adding seven new sections to Chapter 578, RSMo. |
| 161-97 | Oct 16 | BALLOTS.<br>REFERENDUM. | Review and approval of legal content and form of a summary statement prepared pursuant to Section 116.334, RSMo, regarding a proposed law adding seven new sections to Chapter 578, RSMo. |
| 162-97 | Oct 16 | BALLOTS.<br>REFERENDUM. | Review and approval of legal content and form of a fiscal note and fiscal note summary statement prepared pursuant to Section 116.175, RSMo, regarding a proposed law adding seven new sections to Chapter 578, RSMo. |
| 169-97 | Nov 13 | BALLOTS.<br>REFERENDUM. | Review and rejection pursuant to Sections 116.332 and 116.334, RSMo, of the sufficiency as to form of regarding a proposed law adding seven |

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| | | | new sections to Chapter 578, RSMo. |
| 174-97 | Nov 21 | BALLOTS. REFERENDUM. | Review and approval of legal content and form of a fiscal note and fiscal note summary statement prepared pursuant to Section 116.175, RSMo, regarding a proposed law adding seven new sections to Chapter 578, RSMo. |

COLLECTOR'S DEEDS:
DELINQUENT TAX SALES:

Pursuant to Section 140.260, RSMo 1994, (1) the land held by the county-appointed trustee should be sold by the method that provides the maximum amount available for distribution to the taxing authorities, (2) each lot may be sold separately or the land may be sold in tracts, and (3) the county is not responsible for subdivision assessments levied against the land during the time the land is held by the trustee.

January 10, 1997

OPINION NO. 45-97

Michael S. Wright
Warren County Prosecuting Attorney
102 East Main
Warrenton, Missouri 63383

Dear Mr. Wright:

This opinion is in response to your questions concerning the sale of land due to delinquent taxes pursuant to Chapter 140, RSMo.[1] Your questions are essentially as follows:

> (1) Does the issuance of the collector's deed by the county collector extinguish the liens (i.e., deed of trust, mortgage, subdivision assessments, etc.) that existed against the property at the time the collector's deed was issued and/or filed?

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[1] All statutory references are to the 1994 Revised Statutes of Missouri unless otherwise indicated.

(2) (a) If the land purchased by the county-appointed trustee, pursuant to Section 140.260, RSMo, happens to be in a subdivision and/or association, does the county acquire any and all voting rights associated with the ownership of that property? (b) If the land purchased by the county trustee has subdivision assessments levied against it, is the county responsible for these during the time the land is being held in trust?

(3) What method of sale should the county use after it has acquired lands pursuant to Section 140.260, RSMo, at a delinquent tax sale through the appointed trustee? Can land be sold individually or in tracts?

We understand your questions arise primarily from multiple lots in a subdivision in your county being sold for delinquent property taxes.

We first address your third question asking about the sale of land acquired pursuant to Section 140.260. Section 140.260 provides:

**140.260. Purchase by county or city, when – procedure.** – 1. It shall be lawful for the county commission of any county, and the comptroller, mayor and president of the board of assessors of the city of St. Louis, to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which section 140.250 is applicable, and to purchase at such sales all lands or lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids.

2. Such person or persons so designated are hereby declared as to such purchases and as titleholders pursuant to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the taxes against all such lands or lots so sold.

3. Such person or persons so designated shall not be required to pay the amount bid on any such purchase but the collector's deed issuing on such purchase shall recite the

> delinquent taxes for which said lands or lots were sold, the amount due each respective taxing authority involved, and that the grantee in such deed or deeds holds title as trustee for the use and benefit of the fund or funds entitled to the payment of the taxes for which said lands or lots were sold.
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> 4. The costs of all collectors' deeds, the recording of same and the advertisement of such lands or lots shall be paid out of the county treasury in the respective counties and such fund as may be designated therefor by the authorities of the city of St. Louis.
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> 5. All lands or lots so purchased shall be sold and deeds ordered executed and delivered by such trustees upon order of the county commission of the respective counties and the comptroller, mayor and president of the board of assessors of the city of St. Louis, and the proceeds of such sales shall be applied, first, to the payment of the costs incurred and advanced, and the balance shall be distributed pro rata to the funds entitled to receive the taxes on the lands or lots so disposed of. [Emphasis added.]
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> * * *

Section 140.260.5 simply states that "[a]ll lands or lots so purchased shall be sold . . . ." No method for such sale is set forth in Chapter 140.

> Where [a] statute is not explicit . . . , but confers powers and duties in general terms, there may be resort to the necessary implications and intendments of the language to determine legislative intent. [Citation omitted.] An implied power within this meaning is a power necessary for the efficient exercise of the power expressly conferred. In that sense, that which is implied in a statute is as much a part of it as that which is expressed. [Citation omitted.]

AT & T Information Systems, Inc. v. Wallemann, 827 S.W.2d 217, 223-24 (Mo. App. 1992). "In construing a statute, we must give effect to the expressed intent of the legislature; we must not add provisions under the guise of construction if they are not

plainly written or necessarily implied. Wilkinson v. Brune, 682 S.W.2d 107, 111 (Mo. App. 1984). Because the statute does not specify a procedure for such sale, the trustee is not restricted to one specific method of selling the property. As stated by this office in Opinion No. 13, Butler, October 22, 1954 (a copy of which is enclosed) interpreting Section 140.260, RSMo 1949, the land may be sold "for as much as can be obtained therefor, whether that sum be more or less than the amount of delinquent taxes." Id. at page 3. The land should be sold by the method that provides the maximum amount available for distribution to the taxing authorities.

One of the concerns expressed as part of the third question of your opinion request is whether the land held by the trustee pursuant to Section 140.260 can be sold by the trustee by individual lot or in tracts. Although Section 140.420.2 states that when multiple tracts or lots of land are sold for the nonpayment of taxes to the same purchaser all the lots are to be included in one deed, this language in no way restricts the separation of the lots or tracts for sale. Consistent with the discussion above, each lot can be sold separately or the land can be sold in tracts so as to maximize the amount available for distribution to the taxing authorities. Any restrictions in the subdivision or association covenants or agreement may need to be considered, however.[2]

Your question which we have numbered 2(b) asks if the land purchased by the county trustee has subdivision assessments levied against it, is the county responsible for these during the time the land is being held in trust. This office in Opinion No. 24, Downs, April 17, 1953 (a copy of which is enclosed) addressed land held by a trustee under Section 140.260, RSMo 1949, being assessed by a city pursuant to statute for the paving of a nearby street. This office concluded "that the tax bill may not be enforced against general revenue received by the county court" (now known as the "county commission"). Id. at page 4. This office further stated: "This view is further supported by practical considerations in that it would be unjust to allow recovery of special tax bills from the county's general revenue when the land or lots is owned by the various taxing authorities and the county beneficially has only a small interest in the property."

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[2]We have not been provided a copy of the subdivision or association covenants or agreement. Our opinion is limited to the applicable statutes and we do not consider the impact, if any, of any subdivision or association covenants or agreement. House Bill No. 979, 88th General Assembly, Second Regular Session (1996) enacted a new section to be known as Section 140.722 stating: "Any sale of lands under this chapter shall be subject to valid recorded covenants running with the land and to valid easements of record or in use."

Id. at page 5. Consistent with the discussion in that opinion, we conclude that the county is not responsible for subdivision assessments levied against the land during the time the land is held by a trustee pursuant to Section 140.260.

Your question numbered 1 asks whether the issuance of a collector's deed extinguishes existing liens such as deeds of trust, mortgages, subdivision assessments, etc. The issuance of the collector's deed generally will extinguish liens that existed against the property at the time the collector's deed was issued. McMullin v. Carter, 639 S.W.2d 815, 817-18 (Mo. banc 1982); St. Louis Housing Authority v. Evans, 285 S.W.2d 550, 553 (Mo. 1955); State ex rel. Buder v. Hughes, 166 S.W.2d 516, 518 (Mo. 1942); Campbell v. Siegfried, 823 S.W.2d 156, 158 (Mo. App. 1992). The collector's deed entitles the purchaser to "an absolute estate in fee simple, subject, however, to all claims thereon for unpaid taxes except such unpaid taxes existing at time of the purchase of said lands and the lien for which taxes was inferior to the lien for taxes for which said tract or lot of land was sold." § 140.420. In addition to the liens which by the wording of Section 140.420 are not extinguished, the failure to give adequate notice to those with a recorded interest in the land can result in a failure to extinguish that interest. Anheuser-Busch Employees' Credit Union v. Davis, 899 S.W.2d 868 (Mo. banc 1995). As can be seen from reviewing the cases cited above, the facts relating to the lien or liens about which you are concerned and the specific situation are relevant in addressing your question. We have been provided no information regarding the specific lien or liens about which you are concerned and are therefore unable to address your question with regard to a specific lien or liens. Furthermore, the rights which the purchaser from the trustee acquires is a matter to be resolved between the purchaser and any party asserting a lien to the property. Through our opinions process, this office does not resolve disputes between two private parties-the purchaser and the party asserting a lien.

Your question which we have numbered 2(a) asks if the land purchased by the county-appointed trustee is in a subdivision and /or association, does the county acquire any and all voting rights associated with the ownership of the property. Again, because we have been provided no information regarding the specific subdivision and/or association, we are unable to address this question.

## CONCLUSION

It is the opinion of this office that pursuant to Section 140.260, RSMo 1994, (1) the land held by the county-appointed trustee should be sold by the method that provides the maximum amount available for distribution to the taxing authorities, (2) each lot may be sold separately or the land may be sold in tracts, and (3) the county is

not responsible for subdivision assessments levied against the land during the time the land is held by the trustee.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ASSESSORS:
COUNTY BOARD OF EQUALIZATION:
COUNTY COLLECTOR:
OMITTED PROPERTY:
PROPERTY TAX:
STATE TAX COMMISSION:
TAXATION - OMITTED PROPERTY:
TAX RECEIPTS:

With regard to a third class county 1) where tangible personal property has not been assessed or taxed in the previous year or years, there is no authority for the assessor or other county officials to place the property on the books in order to assess and tax for the omitted year or years, and 2) pursuant to Section 301.025, RSMo, as amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 316, 89th General Assembly, First Regular Session (1997), if tangible personal property was assessable by a county for a certain tax year, but was not assessed during that tax year, the county collector, upon request, is to certify that no taxes were due for that tax year and send that statement to the person making the request.

October 27, 1997

OPINION NO. 60-97

The Honorable Mary Lou Sallee
State Representative, District 144
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Sallee:

This opinion is in response to your question concerning the assessment of omitted tangible personal property and the county collector's duties under Section 301.025, RSMo. You pose the following question:

> Where tangible personal property has not been assessed or taxed in the previous year or years, can the assessor or other county officials place the property on the books in order to assess and tax for the omitted year or years?

In your opinion request you state:

> The Assessor of Douglas County has contacted me requesting guidance regarding the placement of tangible

> personal property on the tax rolls for past years where there has been a failure to assess the property in the previous year or years. A typical practice in many counties in Missouri is to add omitted personal property, usually motor vehicles, the following year when taxpayers are required to have a personal property tax receipt in order to renew the vehicle's license. However, the Douglas County Collector, relying upon an Attorney General opinion [Opinion No. 27, Evans, January 16, 1950], issues a waiver of no taxes due pursuant to [Section 301.025, RSMo] to taxpayers who have not paid the previous year's taxes. Due to various statutory changes since the 1950 opinion, there is some doubt as to that opinion's validity, also as it refers to [Section 137.280, RSMo].

It is our understanding that your inquiry is solely regarding assessment of omitted tangible personal property, and that the county which is the subject of your inquiry, Douglas County, is a third class county.

This office has issued numerous opinions regarding property assessment, including the matters about which you inquire. Many of these opinions date back to the 1930s, 1940s and 1950s, and matters relevant to your inquiry are scattered throughout the opinions. With this opinion, we will address the issues about which you inquire based upon the law as it now exists. It will be evident, however, that in many areas, there have been no changes in the law, for the wording of many of the relevant statutory provisions has remained the same, though now codified differently.

Assessment for a tax year (which coincides with a calendar year) begins on the first day of January of that year. §§ 137.075, 137.080.[1] Generally, for a person to be assessed and liable for taxes on tangible personal property for a tax year, he must own that property on the first day of January of that year. § 137.075. With exceptions not relevant to your inquiry, tangible personal property is to be assessed in the county in which the owner resides, regardless of where the property is located. § 137.090.

A county assessor has the annual duty of making a list of all real property and tangible personal property taxable in his county. § 137.115. A county assessor may

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[1] Unless otherwise indicated, all statutory references are to the 1994 Revised Statutes of Missouri.

mail out personal property assessment forms to aid in making his list. § 137.115.2. A taxpayer, with certain exceptions, is to file his personal property assessment form with the county assessor between January 1 and March 1 of the tax year; if he fails to do so, he may be assessed a penalty. § 137.280. In addition to the personal property assessment forms submitted by taxpayers, a county assessor is to make use of a list provided annually by the Department of Revenue "showing the description of all motor vehicles, motor boats and trailers, registered with the department of revenue, the name and address of the owner or the name and address of the registered agent of a corporate owner, of all motor vehicles, motor boats and trailers having a personal property situs within the county." § 137.116.

From the forms and lists the county assessor receives and the information he otherwise obtains, he is to "make a complete list of all the real and tangible personal property taxable by his county to be called the assessor's book." § 137.210. The assessor's book is turned over to the county commission, § 137.245, and the county clerk extends the taxes in the book, § 137.290. Once the taxes are extended, the book is known as the "tax book." § 137.290. The county clerk will turn the tax book over to the county collector, and the figures in the book serve as the basis for his collection of taxes. § 137.290. The duties previously discussed help to insure that all tangible personal property which is taxable in a county in a tax year is known by the county assessor during that tax year, so that it can be assessed in a timely fashion.

Your question, however, asks whether property which was not discovered during the tax year, and therefore not assessed during that tax year, can in a later year be assessed for a previous tax year. An example would be that on January 1, 1993, a resident of the county owned an automobile, but the automobile was not assessed during 1993 for the 1993 tax year. This information was learned by the relevant authorities in 1994. The question is whether in 1994, or later years, the automobile could be assessed for the 1993 tax year and the person thus would owe taxes on it for 1993.

"[U]nder our system of taxation there can be no lawful collection of a tax until there is a lawful assessment and there can be no lawful assessment except in the manner prescribed by law." State ex rel. Halferty v. Kansas City Power & Light Co., 145 S.W.2d 116, 120 (Mo. 1940); accord State ex rel. Jackson County Library District v. Evans, 232 S.W.2d 386, 388 (Mo. 1950). There is no equitable authority to assess and tax property; express statutory authority must exist. State ex rel. Davis v. Walden, 60 S.W.2d 24, 26 (Mo. 1933); State ex rel. Ford Motor Co. v. Gehner, 27 S.W.2d 1, 3 (Mo. banc 1930); City of Hannibal ex rel. Bassen v. Bowman, 71 S.W. 1122, 1123

(Mo. App. 1903); Missouri Attorney General Opinion No. 62, Mitchell, October 8, 1941, pp. 2-3 (copy enclosed).

The question of adding omitted tangible personal property has been addressed in various opinions of this office, including the opinion to which you refer in your request, Opinion No. 27, Evans, January 16, 1950, a copy of which is enclosed. In that opinion this office referenced Opinion No. 76, Robinson, June 25, 1945, a copy of which is also enclosed. In the Robinson opinion, it was discovered that some taxable property had not been assessed, and the questions were whether an assessment of the omitted property could be made, when the assessment could be made and by what assessor. This office considered whether the statutory provision which is now codified as Section 137.175 provided any authority to assess such omitted property. Section 137.175 states in relevant part:

> **137.175. Failure to assess taxable property – method of subsequent assessments.** – Whenever there has been a failure to assess the taxable property in any county for any year or years, the assessor of said county for the time being shall assess the property for the year or years in which said failure shall have occurred. . . .

The Robinson opinion noted the holding in Gehner, 27 S.W.2d at 5, regarding the statutory provision which is now codified as Section 137.175:

> This section covers the situation where the entire assessment for the county has been omitted for any year or the assessment sought to be made has been held void for some reason. The section has no application to the omission of assessable personal property from the return of an individual taxpayer.

Robinson opinion at pp. 2-3. This holding finds further support in Bowman, 71 S.W. at 1123, which held, regarding a predecessor to Section 137.175, "This provision of the statute applies only where there has been a total failure to make an assessment in the county for any year or years. It has no application to a back assessment of the personal property of a single taxpayer." We find no subsequent case law or statutory changes which would affect these holdings. Section 137.175 does not authorize the addition of omitted property in the situation about which you inquire.

The Robinson opinion addressed the authority to assess omitted real property as well as omitted personal property. Sections 137.160 and 137.165 authorize the assessment of omitted real property even if it is discovered years afterward. But those provisions, by their own language, apply to real property, not to tangible personal property. City of Cape Girardeau v. Buehrmann, 49 S.W. 985, 987 (Mo. 1899); Robinson opinion at p. 8; Opinion No. 40, Hibbard, April 28, 1943, p. 3 (copy enclosed). Sections 137.160 and 137.165 do not provide authority for an assessment of omitted tangible personal property.

At this point, we also want to address Section 137.265, which states:

> **137.265. Assessment not illegal because of informality in making.** – An assessment of property or charges for taxes thereon shall not be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessment not being made or completed within the time required by law.

Regarding the nearly identically worded predecessor to this provision, it was stated, "This section does not give the assessor authority to make a given assessment, but, where he has such authority, mere subsequent informalities will not invalidate the assessment." Gehner, 27 S.W.2d at 5. Section 137.265 does not provide authority for an assessment of omitted tangible personal property.

Returning to the Evans and Robinson opinions, each stated that authority to assess omitted tangible personal property existed for county boards of equalization and the State Tax Commission. The authority for a county board of equalization to add omitted property is set forth in Section 138.070 as follows:

> **138.070. Assessment of property omitted from assessor's books – notice – hearings.** – 1. The county board of equalization, in regular session, shall have authority to assess and equalize the value of any property that may have been omitted from the assessor's books then under examination by said board, . . . . [Emphasis added].
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This provision authorizes a county board of equalization to add omitted property "to the books for the current year only, as they are the only ones '[then] under examination

by said board.'" State ex rel. Western Tie & Timber Co. v. Pulliam, 135 S.W. 443, 444 (Mo. 1911); Evans opinion at pp. 1-3; Robinson opinion at pp. 3-4; Opinion No. 20, Davis, April 9, 1935 (copy enclosed); Opinion No. 1, Adams, October 27, 1933 (copy enclosed). We find no subsequent case law or statutory amendments or enactments which would change the validity of this statement. Section 138.070 does not authorize the assessment of omitted tangible personal property for prior years. Nor do we find any other statute which grants a county board of equalization the authority to assess omitted tangible personal property for prior years. Thus a county board of equalization cannot assess omitted tangible personal property for prior years.

The State Tax Commission's authority to assess omitted property is found in Sections 138.380, 138.460 and 138.470 as follows:

> **138.380. Duties and powers of commission.** – It shall be the duty of the state tax commission, and the commissioners shall have authority, to perform all duties enumerated in this section and such other duties as may be provided by law:
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> (3) To cause to be placed upon the assessment rolls at any time during the year omitted property which may be discovered to have, for any reason, escaped assessment and taxation, and to correct any errors that may be found on the assessment rolls and to cause the proper entry to be made thereon;
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> **138.460. Inspection of assessment rolls – assessment of property omitted from rolls – notice given.** – 1. After the various assessment rolls required to be made by law shall have been passed upon by the several boards of equalization and prior to the making and delivery of the tax rolls to the proper officers for collection of the taxes, the several assessment rolls shall be subject to inspection by the commission, or by any member or duly authorized agent or representative thereof.

> 2. In case it shall appear to the commission after such investigation, or be made to appear to said commission by written complaint of any taxpayer, who has previously appealed to the local board of equalization, that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said commission may issue an order directing the assessing officer whose assessments are to be reviewed to appear with his assessment roll and the sworn statements of the person or persons whose property or whose assessments are to be considered, at a time and place to be stated in said order, . . . . [Emphasis added].
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> **138.470. Hearing – correction of books – compensation of assessor – court review – commission assessment final. –**
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> 2. As to the property not upon the assessment roll, the county clerk, upon order of the state tax commission, acting in said review, shall place the same upon said assessment roll by proper description and shall place thereafter in the proper column the value required by law for the assessment of said property. . . .
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> * * *

This office has stated that by the language in these provisions "the State Tax Commission has power to place on the assessment rolls omitted tangible personal property only for the year for which the Commission is reviewing such assessment rolls." Evans opinion at pp. 4-5. We find no subsequent case law or statutory amendments or enactments which would change the validity of this statement. Sections 138.380, 138.460 and 138.470 do not authorize the assessment of omitted tangible personal property for prior years. Nor do we find any other statute which grants the State Tax Commission the authority to assess omitted tangible personal property for prior years. Thus the State Tax Commission cannot assess omitted tangible personal property for prior years.

In your opinion request, you express concern that Section 137.280 affects the authority, or lack thereof, to assess omitted tangible personal property for prior years. In looking at that provision, we think that the specific provision which most likely draws your attention is Section 137.280.3, which states:

> **137.280. Failure to deliver list, penalty, exceptions, second notice by assessor required before penalty to apply. –**
>
> * * *
>
> 3. It shall be the duty of the county commission and assessor to place on the assessment rolls for the year all personal property discovered in the calendar year which was taxable on January first of that year.

By the plain language of this provision, it imposes a duty upon the county assessor and the county commission to place on the assessment rolls for a particular tax year (which coincides with the calendar year), all personal property assessable for that year which is discovered during that year. It does not authorize the placement of omitted tangible personal property on the assessment rolls for prior years.

We find no statute authorizing the placement on the assessment rolls of omitted tangible personal property for years prior to the one in which the assessable property is discovered. In the absence of such statutory authority, it cannot be done.

Your opinion request also inquires about a county collector's duties pursuant to Section 301.025.1, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 316, 89th General Assembly, First Regular Session (1997), which states:

> 301.025. 1. No state registration license to operate any motor vehicle in this state shall be issued unless the application for license of a motor vehicle or trailer is accompanied by a tax receipt or a statement certified by the county or township collector of the county or township in which the applicant's property was assessed showing that the state and county tangible personal property taxes for the preceding year have been paid by the applicant or that no such taxes were due or, if the applicant is not a resident of

> this state and serving in the armed forces of the United States, the application is accompanied by a leave and earnings statement from such person verifying such status. Every county and township collector shall give each person a tax receipt or a certified statement of tangible personal property taxes paid. . . . Where no such taxes are due each such collector shall, upon request, certify such fact and transmit such statement to the person making the request. Each receipt or statement shall describe by type the total number of motor vehicles on which personal property taxes were paid, and no renewal of any state registration license shall be issued to any person for a number greater than that shown on his tax receipt or statement except for a vehicle which was purchased without another vehicle being traded therefor, or for a vehicle previously registered in another state, provided the application for title or other evidence shows that the date the vehicle was purchased or was first registered in this state was such that no personal property tax was owed on said vehicle as of the date of the last tax receipt or certified statement prior to the renewal. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms. [Emphasis added].

* * *

In Opinion No. 21, Dale, June 30, 1952, a copy of which is enclosed, this office rendered an opinion regarding the statutory enactment now codified as Section 301.025. The question asked what the county collector was required to do under this section for a person who was a resident of the county and who owned an automobile on January 1 of the tax year, but who was not assessed for and did not pay taxes on that automobile. The office stated that under the facts presented, the collector was to issue to that person a certified statement that no taxes were due. Thus, pursuant to Section 301.025, if tangible personal property was assessable by a county for a certain tax year, but was not assessed during that tax year, the county collector, upon request, is to certify that no taxes were due for that tax year and send that statement to the person making the request.

## CONCLUSION

It is the opinion of this office that with regard to a third class county 1) where tangible personal property has not been assessed or taxed in the previous year or years, there is no authority for the assessor or other county officials to place the property on the books in order to assess and tax for the omitted year or years, and 2) pursuant to Section 301.025, RSMo, as amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 316, 89th General Assembly, First Regular Session (1997), if tangible personal property was assessable by a county for a certain tax year, but was not assessed during that tax year, the county collector, upon request, is to certify that no taxes were due for that tax year and send that statement to the person making the request.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures

CITY LIBRARIES:
LIBRARIES:
LIBRARY FUNDS:

Among the permitted expenditures from the fund created by Section 182.260, RSMo 1994, are: 1) building repairs, 2) heating and air conditioning improvement and replacement, 3) equipment for building security, 4) salaries for maintenance and security staff, 5) the purchase of real estate to be used for a library, 6) feasibility studies for property proposed to be purchased for a library, 7) upkeep and improvement of grounds and parking areas at the library site, 8) furniture such as tables and chairs, 9) office equipment such as file cabinets, 10) display racks and bookshelves, and 11) a projection system and slide projector for use in the library.

January 10, 1997

OPINION NO. 75-97

The Honorable Ken Jacob
State Senator, District 19
State Capitol Building
Jefferson City, Missouri 65101

and

The Honorable Tim Harlan
State Representative, District 23
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Jacob and Representative Harlan:

Each of you has requested an opinion of this office relating to the Columbia Public Library. The questions posed are as follows:

> What expenditures may legally be made from a Fund established pursuant to § 182.260 RSMo?

Specifically:

1. Among items "a" through "n" below, what expenses must be covered by this fund?

2. Among items "a" through "n" below, what expenses may be covered by this fund?

3. Among items "a" through "n" below, what expenses may not be covered by this fund?

   a. Furniture, such as tables and chairs.

   b. Office equipment such as file cabinets.

   c. Items used to store and display items in the Library, such as display racks, book shelves, and book carts.

   d. Audio-visual equipment for use in the Library, such as projection system and slide projector.

   e. Computer equipment, including hardware, software, installation, and servicing.

   f. Building repairs.

   g. Heating and air conditioning improvement and replacement.

   h. Upkeep and improvement of grounds and parking areas.

   i. Legal and accounting fees for services provided which relate to building fund.

   j. Building security and equipment.

   k. Travel by staff or board for any purpose.

   l. Real property purchases.

m. Feasibility studies for real property proposed for purchase.

n. Salaries for maintenance, security, and technical support staff.

You provided the following information relating to your opinion request:

> The Columbia Public Library ("Library") is established pursuant to § 182.140, RSMo. In addition to the library tax levied pursuant to § 182.140, the Library also receives funds from a library building tax pursuant to § 182.260. Moneys coming from the library tax (§ 182.140 tax) are deposited into the "operating fund" and the moneys coming from the library building tax (§ 182.260 tax) are deposited into the "building fund." The Columbia Public Library Board of Trustees wants a clarification as to what types of expenditures may, must, or may not be made out of the "building fund" under § 182.260.

Section 182.260, RSMo 1994, establishes the fund to which your questions refer. Such section provides:

> **182.260. Library building tax—duration, rate, election—funds, management and disbursement (cities 10,000 or over).—** Whenever in any city which has decided or shall hereafter decide to establish and maintain a free public library under the provisions of sections 182.140 to 182.301, voters equal to five percent of the total vote cast for governor at the last election in the city in writing petition the proper authorities, asking that an annual tax be levied as an increased rate of taxation for the erection and maintenance of free public library buildings in the city, and specify in their petition an annual rate of taxation, which shall not be levied for more than ten years on all taxable property in the city, and the board of trustees of the free public library of the city deems it necessary that the library buildings be erected and properly maintained and refurbished, and so express its opinion by resolution, then the question shall be submitted at an election. The order of

> the governing body and the notice shall specify the name of the city and the rate of taxation mentioned in the petition. If a majority of the voters voting on the question vote in favor of the increased tax, the tax specified in the notice shall be levied and collected in like manner with other general taxes of the city, and shall be known as the "Library Building, Maintenance and Refurbishing Fund". All funds received pursuant to this section shall be utilized by the board of trustees for erection of a library or for the normal maintenance, remodeling or refurbishing of any existing library under the control of the board. At least once in every month the proper city finance officer shall pay over to the treasurer of the library district all moneys received and collected for the library building, maintenance and refurbishing fund, including interest on such moneys, and take duplicate receipts from the treasurer, one of which he shall file with the secretary of the library district and the other of which he shall file in his settlement with the city governing body. [Emphasis added.]

The section specifically provides that the funds shall be utilized by the Board of Trustees for "erection of a library or for the normal maintenance, remodeling or refurbishing of any existing library."

One of the enumerated permitted purposes for which the funds collected pursuant to Section 182.260 can be expended is "normal maintenance." This office in prior opinions has considered what constitutes "maintenance." Enclosed herein is a copy of Opinion No. 181-91 and Opinion Letter No. 28-90 which addressed permitted expenditures under statutes allowing expenditures for "maintenance." In Opinion Letter No. 28-90, this office looked to the dictionary to determine the meaning of the word "maintenance":

> The word "maintenance" has been defined as:
>
> "a maintaining or being maintained; upkeep, support , . . . the work of keeping a building, machinery, etc. in a state of good repair. . . ."
>
> Webster's New World Dictionary, Second College Edition, 1980, page 854.

> The word "maintain" has been defined as:
>
> "1. to keep or keep up; continue in or with; carry on 2. a) to keep in existence or continuance . . . b) to keep in a certain condition or position, esp. of efficiency, good repair, etc.; preserve . . ."
>
> Webster's New World Dictionary, Second College Edition, 1980, page 854.

Opinion Letter No. 28-90 at pages 2 and 3. In reliance on these dictionary definitions, the opinion letter concluded that "maintenance" includes expenditures for the purposes of upkeep and to keep the facilities and buildings in a state of good repair. The discussion in Opinion Letter No. 28-90 was relied on in Opinion No. 181-91 in deciding whether each of four specified expenditures constituted maintenance.

The fund about which you are concerned includes among the permitted purposes "remodeling" and "refurbishing." The relevant statute provides no definition for these terms. Undefined words are given their plain and ordinary meaning as found in the dictionary in order to ascertain the intent of lawmakers. Asbury v. Lombardi, 846 S.W.2d 196, 201 (Mo. banc 1993). "Remodel" is defined as "to make over; rebuild." Webster's New World Dictionary, Second College Edition, 1979, page 1202. "Refurbish" is defined as "to brighten, freshen, or polish up again; renovate." Webster's New World Dictionary, Second College Edition, 1979, page 1194.

"[E]rection of a library" is another enumerated permitted purpose for the fund. In State ex rel. Wahl v. Speer, 223 S.W. 655 (Mo. banc 1920), the Missouri Supreme Court considered the permitted expenditures under the phrase "for the erection of a courthouse or jail." The court concluded that the authority to erect a public building impliedly embraced the authority to buy a site for it for the plain reason that without a site, the building cannot be erected. Similarly, we conclude the authority to use the fund for the erection of a library includes the authority to use the fund for the acquisition of the site for the library.

The guidance set forth in the opinions and cases discussed above resolves several of the items listed in your questions. "Building repairs" (item f of your listed subparagraphs) would be for the purpose of keeping the building in a state of good repair. Such repairs might be deemed "normal maintenance" or might be deemed "remodeling or refurbishing" depending on the circumstances. Regardless, building repairs is a permitted expenditure from the fund.

Similarly, "heating and air conditioning improvement and replacement" (item g), depending on the specific circumstances, might be deemed "normal maintenance" or might be deemed "remodeling or refurbishing." Regardless, heating and air conditioning improvement and replacement is a permitted expenditure from the fund.

Another item about which you inquire is "building security and equipment" (item j). You have provided no detailed information regarding the type of expenditures which you are describing as building security and equipment. Another of your subparagraphs relates to the salaries for security staff so we presume this item refers to security equipment associated with the building such as security cameras, alarm systems, etc. Such security equipment would be designed to safeguard the building and, therefore, is a permitted expenditure from the fund.

A related item about which you inquire is "salaries for maintenance, security, and technical support staff" (item n). You have provided no description of the duties of "technical support staff" so it is not feasible for us to address such expenditure. However, salaries for maintenance and security staff were considered in Opinion No. 181-91. In that opinion we concluded that "janitorial personnel is an essential element of keeping a facility in a state of good repair" (page 3 of the opinion). We further stated that to "the extent that security personnel is used to safeguard the facility and equipment, this would also be an element of maintenance" (page 3). Therefore, we conclude that salaries for maintenance and security staff are a permitted expenditure from the fund.

"Real property purchases" (item l) is another item about which you inquire. Section 182.260 lists as one of the enumerated permitted purposes for the fund the "erection of a library." Following the reasoning in State ex rel. Wahl v. Speer, supra, the authority to use the fund for the erection of a library includes the authority to use the fund for the acquisition of a site for a library. Therefore, the purchase of real property for a site for a library is a permitted expenditure from the fund.

Related to the above item is the item you describe as "feasibility studies for real property proposed for purchase" (item m). We assume you are referring to real property proposed for purchase as a site for a library. In Reilly v. Sugar Creek Tp. of Harrison County, 139 S.W.2d 525 (Mo. 1940), the Missouri Supreme Court considered the permitted expenditures from the proceeds of a bond issue which was voted "to construct and gravel or rock" a specified road. The court stated:

> A grant of authority to a township to issue bonds for the purpose of raising funds to pay for the construction of

> roads, necessarily carries with it the authority to pay for rights-of-way upon which to build the roads. If such were not the case the authority to construct roads would be an empty and useless power.

Id. at 526. See also State ex rel. Wahl v. Speer, supra. Feasibility studies for real property proposed for purchase as a library site would be incidental to a real property purchase. Therefore, we conclude that such expenditure is permitted from the fund.

Another of the items about which you inquire is "upkeep and improvement of grounds and parking areas" (item h). In State ex rel. Wahl v. Speer, supra, the court concluded that the erection of a public building included the acquisition of the site. In Cole County v. Board of Trustees of Jefferson City Free Library District, 545 S.W.2d 422, 427 (Mo. App. 1976), the court stated: "It seems reasonable to conclude that in the present day when the automobile is the dominant mode of transportation, the power to create and maintain a public library building and grounds includes the power to build and maintain a parking lot." Following the reasoning in these decisions, we conclude that expenditures for the upkeep and improvement of grounds and parking areas are permitted expenditures from the fund.

You list in your questions as item i "legal and accounting fees for services provided which relate to building fund." You have not provided us any specific information regarding the services provided for which the expenditure is to be made. The fund is expressly limited to expenditures "for erection of a library or for the normal maintenance, remodeling or refurbishing of any existing library." Enclosed herein is a copy of two relevant prior Missouri Attorney General opinions: Opinion No. 70-90 and Opinion No. 34-90. In Opinion No. 70-90 this office considered whether a county could impose an administrative service fee on a special trust fund in which the proceeds from a capital improvements sales tax are deposited. This office stated:

> When the legislature intends to allow a governmental entity to be paid a sum for administrative work relating to the handling of tax revenues, it has done so explicitly. . . . In the absence of any statute authorizing the county to impose an administrative service fee on the special trust fund in which the proceeds from the capital improvements sales tax are deposited, we conclude the county may not impose such an administrative service fee.

Opinion No. 70-90 at page 4. In Opinion No. 34-90, using similar reasoning, this office stated that a city could not impose on a park fund an administrative service fee for processing checks and providing accounting services. Likewise, it would not be permissible for general legal and accounting fees incurred by the library to be allocated to the fund whose purposes are limited by Section 182.260. For example, it would not be permissible to allocate a portion of the cost of an annual audit of the library to the fund. There may be certain expenditures, such as legal services relating to the purchase of real estate for a library site, which may be properly paid from the fund. However, because we have not been provided specific information regarding the legal and accounting fees which are the subject of your questions, it is not feasible for us to opine with regard to a specific expenditure.

You inquire if "travel by staff or board for any purpose" (item k) is a permitted expenditure from the fund. Section 182.260 limits expenditures from the fund to the purposes previously discussed. If your questions relates to travel such as to conventions for officials of libraries, such travel expenditures are not permissible expenditures from the fund. Because we have not been provided with specific information regarding the travel expenditures which are the subject of your questions, it is not feasible for us to opine with regard to a specific expenditure for travel.

Three of the items listed in your questions are so similar that we will consider the items together:

1) Furniture, such as tables and chairs (item a),
2) Office equipment such as file cabinets (item b), and
3) Items used to store and display items in the library, such as display racks, bookshelves, and book carts (item c).

Section 182.143, RSMo 1994, contains references to the fund created under Section 182.260. Section 182.143 refers to the fund as the building maintenance and refurnishing fund. Such reference to the fund as including "refurnishing" appears more than once in Section 182.143. Section 182.143 was initially enacted in 1985 (Laws of Missouri, 1985, page 500, 510). The enactment of Section 182.143 was after the amendment to Section 182.260 in 1982 where the words "remodeling" and "refurbishing" were added to Section 182.260. (Laws of Missouri, 1982, page 370, 371.) It is apparent that in 1985 at the time of the enactment of Section 182.143, the General Assembly considered "refurnishing" as a permitted use of the fund created by Section 182.260. Subsequent statutes may be considered in construing previously enacted statutes. Missouri Hospital Association v. Air Conservation Commission, 874 S.W.2d 380, 398 (Mo. App. 1994). It is appropriate to consider acts passed at

subsequent legislative sessions to ascertain legislative policy and intent. Missouri Division of Employment Security v. Labor and Industrial Relations Commission of Missouri, 637 S.W.2d 315, 318 (Mo. App. 1982). Therefore, expenditures for "refurnishing" are permitted expenditures from the fund. "Refurnish" is defined as "to furnish anew." Webster's Third New International Dictionary, 1961, page 1910. "Furnish" is defined as "to supply (as a room or building) with furniture or appliances; equip for use." Id. at page 923. Included as permitted expenditures for refurnishing would be 1) furniture such as tables and chairs, 2) office equipment such as file cabinets, and 3) items used to store and display items in the library such as display racks and bookshelves. (We are unclear what type of "book carts" your questions refer to and do not address "book carts." Hopefully, the discussion above will resolve the questions you pose regarding "book carts.")

You inquire whether "audio-visual equipment for use in the library, such as projection system and slide projector" (item d) is a permitted expenditure from the fund. A projection system and slide projector for use in the library is part of the furnishings of the library and, therefore, we conclude is a permitted expenditure from the fund.

The final item for consideration is "computer equipment, including hardware, software, installation, and servicing" (item e). Without more information, it is not feasible for us to address this item. There is some computer equipment which is clearly a permitted expenditure from the fund. For example, a computer system designed to control the temperature in the library building is to keep the building in a state of good repair and is a permitted expenditure from the fund. Likewise, a computer system relating to building security is a permitted expenditure from the fund, because it is designed to keep the building in a state of good repair. Without more specific information regarding the computer equipment about which you are concerned, it is not feasible for us to opine on this item.

In the discussion above, we have considered what are permitted expenditures from the fund. One aspect of your questions is whether such expenditures must be made from this fund. While expenditures from the fund are limited to the purposes discussed above, there is no prohibition on such expenditures being paid from other funds that may be available to make such payments. While the fund is restricted to the payment of the specified expenditures, there is no indication in Section 182.260 that such expenditures may not be paid from other sources. This restricted fund is analogous to restricted funds of other political subdivisions where the restricted fund can only be used for specified purposes. See Opinion No. 34-90 at page 2 ("It is well settled that money gathered for a specific purpose cannot be legally used for another

purpose. Stephens v. Bragg City, 27 S.W.2d 1063 (Spr. Ct. App. 1930)."). However, expenditures for those purposes can be paid from nonrestricted funds. See Automobile Club of Missouri v. City of St. Louis, 334 S.W.2d 355, 363-364 (Mo. 1960) ("In the absence of such money being earmarked or limited in its use by some constitutional or statutory provision it may be treated by the city as general revenue and subjected to any proper municipal use.").

## CONCLUSION

It is the opinion of this office that among the permitted expenditures from the fund created by Section 182.260, RSMo 1994, are: 1) building repairs, 2) heating and air conditioning improvement and replacement, 3) equipment for building security, 4) salaries for maintenance and security staff, 5) the purchase of real estate to be used for a library, 6) feasibility studies for property proposed to be purchased for a library, 7) upkeep and improvement of grounds and parking areas at the library site, 8) furniture such as tables and chairs, 9) office equipment such as file cabinets, 10) display racks and bookshelves, and 11) a projection system and slide projector for use in the library.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosures

LEGAL NOTICES:
LEGAL PUBLICATION:
NEWSPAPERS:

A newspaper which has been admitted to the post office as "periodicals" satisfies the requirement of Section 493.050, RSMo 1994, that the newspaper "shall have been admitted to the post office as second class matter."

January 6, 1997

OPINION NO. 80-97

The Honorable Joe Moseley
State Senator, District 19
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Moseley:

This opinion is in response to your question concerning the requirements of Section 493.050, RSMo 1994, in light of a recent change in mail classifications by the United States Postal Service. The information you provided with your opinion request states that the United States Postal Service has "eliminated the term 'second class' and replaced it with 'periodicals' in referring to one class of mail." The issue, as we understand it, is how any newspaper can meet the eligibility requirement of Section 493.050 that the newspaper be admitted to the post office as "second class matter" when there is no longer a mail classification of "second class."[1]

Section 493.050, which sets forth qualifications of a newspaper for legal publications, states, in relevant part:

---

[1] A second-class mail eligibility requirement is set forth in Article VI, Section 19 of the Missouri Constitution. As rules of statutory construction also apply to construing constitutional provisions, State ex inf. Martin v. City of Independence, 518 S.W.2d 63, 65 (Mo. 1974), our opinion set forth herein would also apply to that constitutional provision.

Id. at 985-986. The court concluded the issuance of the certificate granted by the Public Service Commission was fully justified and ruled against the appellants, the Wabash receivers.

In the situation about which you are concerned, because the United States Postal Service no longer uses the term "second class" mail, it is impossible to comply with the requirement of Section 493.050 that the newspaper "shall have been admitted to the post office as second class matter." In State ex rel. North British & Mercantile Ins. Co. v. Thompson, supra, the appellate court deemed proper the pledge of government bonds in lieu of the statutorily-required surety bond where it was impossible to obtain the statutorily-required surety bond. Similarly, in State ex rel. Pitcairn v. Public Service Commission, supra, the court approved the issuance of a certificate by the Public Service Commission allowing an applicant to operate buses over an irregular route even though the applicant failed to strictly comply with the procedures for applying for a certificate because strict compliance with the statute was impossible. In the present situation, strict compliance with the "second class" requirement is impossible because the United States Postal Service no longer uses the term "second class." However, the new term for what formerly was "second class" is "periodicals." The Federal Register quoted previously indicates that "periodicals" has "comparable eligibility standards" to what formerly was known as "second class." The apparent intent of the legislature in Section 493.050 was to impose the eligibility standards associated with "second class" mailings. Those same eligibility standards now apply to "periodicals" so that by complying with the eligibility standards for "periodicals," the apparent legislative intent is fulfilled. Therefore, we conclude that a newspaper which has been admitted to the post office as "periodicals" satisfies the requirement of Section 493.050 that the newspaper shall have been admitted to the post office as "second class" matter.

## CONCLUSION

It is the opinion of this office that a newspaper which has been admitted to the post office as "periodicals" satisfies the requirement of Section 493.050, RSMo 1994, that the newspaper "shall have been admitted to the post office as second class matter."

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

> **493.050. Public advertisements and orders of publication published only in certain newspapers.** – All public advertisements and orders of publication required by law to be made and all legal publications affecting the title to real estate, shall be published in some daily, triweekly, semiweekly or weekly newspaper of general circulation in the county where located and which shall have been admitted to the post office as second class matter in the city of publication; shall have been published regularly and consecutively for a period of three years; shall have a list of bona fide subscribers voluntarily engaged as such, who have paid or agreed to pay a stated price for a subscription for a definite period of time; . . . . [Emphasis added.]

We note that 61 Fed. Reg. 10068, 10123-24 (1996), contains the following statement:

> Effective July 1, 1996, second-class mail was renamed Periodicals. This name change does not alter the status of authorized publications; second-class mailing privileges are now referred to as Periodicals mailing privileges and have comparable eligibility standards. [Emphasis added.]

Statutory construction must always seek to find and further legislative intent. Centerre Bank of Crane v. Director of Revenue, 744 S.W.2d 754, 759 (Mo. banc 1988). We "should use rules of construction which subserve rather than subvert the legislative intent." Christian Disposal, Inc. v. Village of Eolia, 895 S.W.2d 632, 634 (Mo. App. 1995). "The standard rule of construction calls for a statute to be given a reasonable interpretation in light of the legislative objective. [Citations omitted.] Moreover, the true intention of the framers must be followed and where necessary the strict letter of the act must yield to the manifest intent of the Legislature. [Citations omitted.]" BCI Corporation v. Charlebois Construction Co., 673 S.W.2d 774, 780 (Mo. banc 1984).

State ex rel. North British & Mercantile Ins. Co. v. Thompson, 52 S.W.2d 472 (Mo. banc 1932) involved a statute requiring certain funds of the Missouri superintendent of insurance to be protected by a surety bond even though it was practically impossible to acquire such surety bonds at that time. The circuit court had issued an order allowing the funds to be protected by the pledge of government bonds

in lieu of the statutorily-required surety bond. In discussing the inability to comply literally with the statute, the Missouri Supreme Court stated:

> The relief demanded, therefore, is that this court order the superintendent of insurance to perform an impossibility. It is stated in the return, and admitted in the motion for judgment on the pleadings, that, on account of the depressed business conditions and heavy losses of surety companies by reason of failed banks and similar institutions, it became practically impossible for depositories to procure surety bonds except at a prohibitive cost. The order of court, recited in the return, states that surety companies have adopted a policy of refusing to write bonds securing deposits in banks. Naturally no bank would accept the deposits under such conditions. The order of March 5, 1931, was an attempt to meet the conditions of the statute by requiring the title to government bonds and state bonds offered as security to be vested in the superintendent of insurance as trustee; such title to be divested when the depository accounts for and pays over the money. That method was not satisfactory to the insurance companies. Objections to it as effective security for preferred funds naturally appear.
>
> The order of January 28, 1932, provided that the funds now or hereafter accumulated be invested in short-term obligations of the United States which shall be placed in the safety deposit boxes. Such securities could be cashed at any time, and in the opinion of the circuit court afford ample security. In the court's inherent powers it had authority to make that sort of provision for securing the funds in the absence of ability to comply literally with the statute. . . .
>
> The circuit court has ample authority to determine in what way ample security may be given for such funds.

Id. at 474-475. The Missouri Supreme Court did not interfere with the order of the circuit court.

In State ex rel. Pitcairn v. Public Service Commission, 111 S.W.2d 982 (Mo. App. 1937), the receivers for the Wabash Railway Company challenged a certificate granted by the Public Service Commission allowing an applicant to operate buses over an irregular route. One challenge by the Wabash receivers to the certificate was the failure of the applicant to comply with the statute setting forth the procedure for applying for a certificate. The court discussed the impossibility of complying with the statute and stated:

> But, when we attempt to apply this procedure to applications for certificates covering irregular routes, we are confronted with a procedure which it is impossible to follow.
>
> For instance, from what has been said of the applicable statutes above discussed, it is apparent that a literal compliance therewith would require that the application describe in detail every highway and byway in the state of Missouri which could be or might be traveled by a motor vehicle. Such a compliance would be an utter impossibility. He would be required to name every incorporated community in the state of Missouri, and the commission would then be required to serve notice on the clerk of every such city. While the latter procedure is not wholly impossible of compliance, yet the cost thereof, in postage, stationery, printing, and clerical work alone, would render such a procedure prohibitive to almost any applicant for a certificate to operate over an irregular route. A literal compliance would also require that every person, firm, association, or corporation engaged in transportation anywhere in the state of Missouri, at the time of the filing of the application, be named therein, and that they each be notified of the filing of same, and be permitted to be heard at the hearing thereon. The commission would be required, according to the theory of appellants [Wabash receivers], to hear affirmative evidence regarding the effect the granting of the application would have on such transportation agencies than in the field. In the event said agencies did not see fit to come in and offer such evidence, appellants have failed to point out how the commission might procure evidence of this character unless by power of subpoena at

great cost; yet it is seriously urged that that body cannot legally grant a certificate unless it does hear same, it being urged that, without such evidence and information before it, the commission cannot judicially determine that public convenience and necessity require its issue.

Literal compliance with the provisions of the statutes in so far as applications for certificates covering irregular routes are concerned, is impossible. If, then, it is held that there must be such compliance, we will have held, in effect, that no certificate authorizing service over an irregular route may be legally issued. Such a decision would outlaw every common carrier of persons, and probably also of property, by motor vehicle, in the state of Missouri excepting those operating over regular routes. Such a construction would defeat the very purpose the Legislature intended to accomplish when the law was enacted. . . .

We prefer to follow the principle announced by the Supreme Court in State ex rel. Geaslin v. Walker, 302 Mo. 116, loc cit. 121, 257 S.W. 470, 471, where the court said: "One of the aids to construction of statutes is resort to the conditions or evils which the legislation was designed to meet." After making that observation, the court proceeded to declare that the Legislature meant to say "Judicial District," when the statute plainly said "county."

The purpose of the Legislature was to promote the welfare of the state by regulating common carriers by motor vehicle. . . . Through inadvertence it failed to provide any reasonable method of procedure to be followed by the commission in the exercise of this power. In such case the commission is authorized to make general rules where their promulgation "are 'necessary or proper to enable it to carry out fully and effectually all the purposes' of the act." [Citation omitted.] The record in this case shows that such general rules have been promulgated by the commission and were followed by it here. Such proceeding was, under the circumstances here shown, proper.

CITIES, TOWNS AND VILLAGES:
CITY RECORDS:
PUBLIC RECORDS:
RECORDS:
SUNSHINE LAW:

A city council member of a third-class city should have access to the minutes of a meeting of the city council of which she is a member, where she was absent from that meeting, and where the meeting was closed pursuant to Section 610.021(3), RSMo Supp. 1995.

January 10, 1997

OPINION NO. 82-97

The Honorable Linda Bartelsmeyer
State Representative, District 132
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Bartelsmeyer:

This opinion is in response to your question concerning a city council member's access to minutes of a closed meeting where the member was not present at the closed meeting. Your question is basically as follows:

> Does a city council member of a third-class city have access to minutes of a portion of a meeting closed pursuant to Section 610.021(3), RSMo, where the council member did not attend that part of the meeting?

The situation as we understand it is that a city council member left a meeting of the council early, believing that only one matter was left to be resolved in open session. She later learned that after she left, the council went into closed session pursuant to Section 610.021(3), RSMo Supp. 1995. The absent council member requested to see the minutes of the closed session but was denied access.

Chapter 610, RSMo, contains Missouri's open records and open meetings law, commonly known as "the Sunshine Law." All "public records" are presumed to be open unless they can be closed pursuant to one of the exceptions set forth in Section 610.021 of the Sunshine Law. Sections 610.011 and 610.022.5, RSMo 1994. "Public record" is defined in Section 610.010(6), RSMo 1994, as "any record, whether written or electronically stored, retained by or of any public governmental body . . . ." The

city council of a third-class city is a public governmental body. Section 610.010(4), RSMo 1994. Therefore, minutes of meetings of the city council are public records.

You do not state the substance of the discussion during that closed session, but your opinion request indicates that the matter was closed pursuant to the "hiring, firing, disciplining or promoting" exception, which is found in Section 610.021(3), RSMo Supp. 1995, and states as follows:

> **610.021. Closed meetings and closed records authorized when, exceptions.** – Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:
>
> * * *
>
> (3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "**personal information**" means information relating to the performance or merit of individual employees;
>
> * * *

For the purposes of this opinion, we assume that the meeting, and thus the minutes of that meeting, are validly closed to the public, in that the subject matter is within the statutory exception. In Opinion No. 77-92, a copy of which is enclosed, this office opined that elected city council members, whether paid or not, are not "employees" of the city. Id. at 4. As such, Section 610.021(3)'s exception allowing closure is not available for meetings or minutes of meetings in which an elected council member is the topic of discussion. Therefore, the subject of the closed

meeting in this case, assuming that it was validly closed, could not have been the absent council member.[1]

The Sunshine Law in Section 610.010, RSMo 1994, provides the following definition relevant to our inquiry:

> **610.010. Definitions.** – As used in sections 610.010 to 610.030 and sections 610.100 to 610.150, unless the context otherwise indicates, the following terms mean:
>
> (1) **"Closed meeting", "closed record"**, or **"closed vote"**, any meeting, record or vote closed *to the public*; [Emphasis by italics added].

* * *

In this case, the minutes of the closed session are closed records. According to the above definition, it is a record which is closed "to the public." The issue is whether the absent council member may have access to the minutes of the closed meeting even though the minutes are closed "to the public."

"If the statute is ambiguous, we attempt to construe it in a manner consistent with the legislative intent, giving meaning to the words used within the broad context of the legislature's purpose in enacting the law." Sullivan v. Carlisle, 851 S.W.2d 510, 512 (Mo. banc 1993). "The legislature is presumed to intend to enact a just law that serves the welfare of its constituents rather than an absurd law." State ex rel. Lack v. Melton, 692 S.W.2d 302, 304 (Mo. banc 1985).

"Chapter 610 represents a legislative determination and declaration of the public policy of the state relating to meetings, records, and votes of *all* public governmental bodies; that policy being, in general, that such meetings, records and votes be open and available to the people these bodies serve." Cohen v. Poelker, 520 S.W.2d 50, 54 (Mo. banc 1975)(emphasis original). In discussing the purpose of the Sunshine Law, and the reason for the existence of exceptions to the openness requirement, the court in Wilson v. McNeal, 575 S.W.2d 802, 805 (Mo. App. 1978), stated:

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[1] While we can rule out the absent council member as the topic of discussion in the closed meeting for the purposes of this opinion, we still do not know the contents of the closed meeting minutes, and thus our opinion will address the matter only generally.

> The very basic right of the public to be fully informed of government activities conflicts with the obvious necessity for restraints on this right to know in [certain cases]. The conflict here is one between the philosophy of openness in government, . . . and the recognized need for confidentiality in certain special situations. The legislature recognized both the need for openness and the concomitant need for exempting certain types of information from disclosure when it passed the Sunshine Law in 1973.

And in Hyde v. City of Columbia, 637 S.W.2d 251, 262 (Mo. App. 1982), cert. denied, Tribune Publishing Co. v. Hyde, 459 U.S. 1226, 103 S.Ct. 1233 (1983), it was stated:

> Our Sunshine Law and the counterpart statutes of the several states . . . declare a common public policy in favor of open governmental meetings and records. [Citations omitted]. These enactments, nevertheless, exempt from disclosure those phases of governmental operations which the public interest requires be kept confidential. . . .
>
> The clear purpose of the Sunshine Law is to open official conduct to the scrutiny of the electorate — but not [as the exemptions attest] at the expense of essential governmental functions or of the vital personal interests of the citizenry.

In Matter of King v. Ambellan, 173 N.Y.S.2d 98 (N.Y. Sup. Ct. 1958), a school district board member sought access to records related to a project implemented and funded by the school district. The project had been approved by a majority of the board, and the member seeking access had been opposed to the project. The majority of the board instructed the superintendent that the requesting member be denied access to the records he requested. The requesting member sued for access, and the court granted him access, stating:

> A member of a Board of Education has broad supervisory responsibility over the expenditure of district funds and the efficiency of the school system. He is elected to act upon behalf of the people and to do this he must have full information concerning the whole operation . . . .

> The Court is of the opinion that the majority members of the Board of Education may not, by resolution or otherwise, restrict this right of every board member to be fully acquainted with the records and business of the district.

Id. at 100. In Gorton v. Dow, 282 N.Y.S.2d 841, 842 (N.Y. Sup. Ct. 1967), which addressed whether a trustee of a public library had access to library records, the court stated, "It is axiomatic that a trustee of a municipal corporation, having the ultimate responsibility over the affairs of the corporation [citation omitted], has an absolute right to inspect the records maintained by that corporation." The court also suggested that the member of the governing body of a municipal corporation may have greater "rights of inspection" than a member of the public at large. Id. at 843.

While these cases do not address the precise issue which is the subject of this opinion, the reasoning and policy statements are persuasive in this situation, especially in light of the intent of the Sunshine Law. Like the school district board member and the library trustee, a city council member "is elected to act upon behalf of the people" and has "ultimate responsibility over the affairs of the [city]":

> The city council in a city of the third class, elected by the people to represent the inhabitants, is primarily a legislative body exercising general governmental functions. To it broad legislative powers have been delegated, powers which directly affect the lives, liberties, health, business, trade and property of the inhabitants.

Armentrout v. Schooler, 409 S.W.2d 138, 143 (Mo. 1966). We must construe the law to further the legislative intent and serve the welfare of the people. Sullivan, 851 S.W.2d at 512; Lack, 692 S.W.2d at 304. To deny a council member access to the minutes of a meeting from which the member was absent, where the meeting was closed pursuant to Section 610.021(3), does not serve the purposes of the Sunshine Law, especially in light of a council member's duties and responsibilities. It is our opinion that in this situation "closed to the public" does not mean closed to a member of the city council itself.

## CONCLUSION

It is the opinion of this office that a city council member of a third-class city should have access to the minutes of a meeting of the city council of which she is a

member, where she was absent from that meeting, and where the meeting was closed pursuant to Section 610.021(3), RSMo Supp. 1995.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

COUNTIES:
COUNTY OFFICIALS:
COUNTY EMPLOYEES' RETIREMENT SYSTEM:
RETIREMENT:

A member of the County Employees' Retirement System who is receiving retirement benefits from the system is not an "active member" as that term is used in Section 50.1130, RSMo 1994, and is not entitled to the death benefit provided by that section.

June 10, 1997

OPINION NO. 86-97

J. Ronald Carrier
Greene County Prosecuting Attorney
1010 Boonville
Springfield, Missouri 65802

Dear Mr. Carrier:

This opinion is in response to your question concerning the County Employees' Retirement System. Your question asks:

> Do Sections 50.1000 through 50.1200, RSMo, allow the County Employees' Retirement Fund Board to require an eligible retiring member to waive his right to the death benefit provided by Section 50.1130, RSMo?

The statutes creating and controlling the County Employees' Retirement System ("CERS") are found at Sections 50.1000 through 50.1200, RSMo 1994 and Supp. 1995. Section 50.1130, RSMo 1994, states:

> **50.1130. Death benefit.**—A death benefit of ten thousand dollars shall be paid to the designated beneficiary of every active member upon his death or to his estate if there is no designated beneficiary. [Emphasis added].

The issue is whether a member who is receiving retirement benefits from CERS is entitled to the death benefit provided by Section 50.1130. The death benefit, per the language of Section 50.1130, is for "active members." There is no statutory definition of "active member" for purposes of CERS; thus, we must discern its meaning.

"The meaning of a word must depend to some extent on the context in which it appears." Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15, 19 (Mo. banc 1995). We must look at the statute as a whole and read it in its entirety. National Advertising Company v. Missouri State Highway and Transportation Commission, 862 S.W.2d 953, 954 (Mo. App. 1993). In addition to the use of the term "active member" in Section 50.1130, the term "retired member" appears in Sections 50.1000(1), 50.1060, and 50.1090, RSMo 1994. There is no definition of "retired member" in the CERS statutes. "We must presume that every word of a statute was included for a purpose and has meaning." Committee on Legislative Research of Missouri General Assembly v. Mitchell, 886 S.W.2d 662, 664 (Mo. App. 1994); accord Hyde Park Housing Partnership v. Director of Revenue, 850 S.W.2d 82, 84 (Mo. banc 1993). In accord with this rule, the terms "active" and "retired" preceding "member" must each be given meaning. An "active member" must be different than a "retired member." Section 50.1040.1, RSMo 1994, in discussing membership in CERS states: "Such membership shall continue as long as the person continues to be an employee [of the county], or receives benefits under the provisions of sections 50.1000 to 50.1200 [CERS], or elects to opt out of the system . . . ." A member who is receiving retirement benefits from CERS would be a "retired member." Therefore, an "active member" would not be receiving retirement benefits from CERS. The death benefit in Section 50.1130 is only applicable to an "active member" so the death benefit is not applicable to a member who is receiving retirement benefits from CERS.[1]

There is further support for our determination that "active member" does not include a member receiving retirement benefits. "In construing a statute it is appropriate to take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed, even though the statutes are found in different chapters and were enacted at different times. [Citation omitted]. When the legislature enacts a statute referring to terms which have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." Citizens Electric Corporation v. Director of Department of Revenue, 766 S.W.2d 450, 452 (Mo. banc 1989). Section 169.270, RSMo Supp. 1995, contains definitions pertinent to the retirement system in certain school districts. It contains the following definitions which may be helpful to our analysis:

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[1]To address your question, we need not address and therefore do not address whether a former employee of a county who is not presently receiving retirement benefits but will be entitled to retirement benefits at a later date is entitled to the death benefit provided by Section 50.1130.

**169.270. Definitions.**— Unless a different meaning is clearly required by the context, the following words and phrases as used in sections 169.270 to 169.400 shall have the following meanings:

* * *

(14) **"Member"**, any person who is a regular employee after the retirement system has been established hereunder ("active member"), and any person who (i) was an active member, (ii) has vested retirement benefits hereunder, and (iii) is not receiving a retirement allowance hereunder ("inactive member");

* * *

(18) **"Retirant"**, a former member receiving a retirement allowance hereunder;

* * *

Section 169.410, as amended by House Committee Substitute for Senate Committee Substitute No. 2 for Senate Bill No. 860, 88th General Assembly, Second Regular Session (1996), also contains definitions pertinent to a retirement system in certain other school districts. The following definitions may be helpful to our analysis:

169.410. The following words and phrases as used in sections 169.410 to 169.540, unless a different meaning is plainly required by the context, shall have the following meanings:

* * *

(13) "Member", a member of the retirement system defined as an:
(a) "Active member", a member who is an employee; or
(b) "Inactive member", a member who is not an employee;

* * *

(17) "Retirant" or "retired member", a former member receiving a retirement allowance or optional retirement allowance or other benefit;

* * *

In each of these other retirement systems, an "active member" is defined so as to not include those persons receiving retirement benefits from the retirement system.

The specific question you pose is whether Sections 50.1000 through 50.1200 allow CERS to require an eligible retiring member to waive his right to the death benefit provided by Section 50.1130. We have already concluded that the death benefit in Section 50.1130 is not applicable to a member who is receiving retirement benefits from CERS. Whether a member who receives retirement benefits from CERS has waived his right to the death benefit is irrelevant, because under Section 50.1130 the death benefit is not applicable to a member who is receiving retirement benefits.

## CONCLUSION

It is the opinion of this office that a member of the County Employees' Retirement System who is receiving retirement benefits from the system is not an "active member" as that term is used in Section 50.1130, RSMo 1994, and is not entitled to the death benefit provided by that section.[2]

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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[2]The Code of State Regulations contains the following definition for "active member" for purposes of the County Employees' Retirement System:

> 16 CSR 50-2.010 Definitions
>
> (1) Active member. A full-time or part-time employee who has elected to participate in the County Employees' Retirement Fund, who is employed by a county and who is not retired.

The conclusion reached in this opinion is consistent with this rule.

APPROPRIATIONS:
COMPENSATION:
GENERAL ASSEMBLY:
STATE OFFICERS:

If the General Assembly appropriates less money for the compensation of officials than the compensation shown in the Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", those officials are to be paid the lesser amount appropriated by the General Assembly rather than the amount shown in the Compensation Schedule.

OPINION NO. 91-97

January 20, 1997

The Honorable William P. McKenna
State Senator, District 22
State Capitol Building
Jefferson City, Missouri 65101

and

The Honorable Steve Ehlmann
State Senator, District 23
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator McKenna and Senator Ehlmann:

Each of you has requested an opinion of this office in response to the following question:

> If the General Assembly appropriates less money for the compensation of elected officials than the compensation recommended in the Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", are those officials to be paid the amount shown in the Compensation Schedule or the amount appropriated by the General Assembly?

Article XIII, Section 3 of the Missouri Constitution creates a commission to be known as the "Missouri Citizen's Commission on Compensation for Elected Officials" (hereinafter referred to as the "Commission"). Subject to the provisions set forth in that constitutional section, the Commission prepares a schedule showing the compensation for elected state officials, members of the general assembly and judges except for municipal judges. The Commission issued a report dated November 30, 1996. The Compensation Schedule attached to that report as Appendix A is attached to this opinion. The issue for consideration is if the General Assembly adopts the compensation schedule, but appropriates less money for the compensation of those officials than the amount shown in the Compensation Schedule, are those officials to be paid the amount shown in the Compensation Schedule or are they to be paid the lesser amount appropriated.

Relevant to your inquiry are the following provisions in Article XIII, Section 3 of the Missouri Constitution:

> **Section 3. Compensation of state elected officials, general assembly members and judges to be set by Missouri Citizens Commission on Compensation—members qualifications, terms, removal, vacancies, duties—procedure.** 1. Other provisions of this constitution to the contrary notwithstanding, in order to ensure that the power to control the rate of compensation of elected officials of this state is retained and exercised by the tax paying citizens of the state, after the effective date of this section no elected state official, member of the general assembly, or judge, except municipal judges, shall receive compensation for the performance of their duties other than in the amount established for each office by the Missouri citizen's commission on compensation for elected officials established pursuant to the provisions of this section. The term "compensation" includes the salary rate established by law, mileage allowances, per diem expense allowances.
>
> 2. There is created a commission to be known as the "Missouri Citizen's Commission on Compensation for Elected Officials". . . .

* * *

> 8. The commission shall, beginning in 1996, and every two years thereafter, review and study the relationship of compensation to the duties of all elected state officials, all members of the general assembly, and all judges, except municipal judges, and shall fix the compensation for each respective position. The commission shall file its initial schedule of compensation with the secretary of state and the revisor of statutes no later than the first day of December, 1996, and by the first day of December each two years thereafter. The schedule of compensation shall become effective unless disapproved by concurrent resolution adopted by the general assembly before February 1 of the year following the filing of the schedule. Each schedule shall be published by the secretary of state as a part of the session laws of the general assembly and may also be published as a separate publication at the discretion of the secretary of state. The schedule shall also be published by the revisor of statutes as a part of the revised statutes of Missouri. The schedule shall, **subject to appropriations,** apply and represent the compensation for each affected person beginning on the first day of July following the filing of the schedule. In addition to any compensation established by the schedule, the general assembly may provide by appropriation for periodic uniform general cost-of-living increases or decreases for all employees of the state of Missouri and such cost-of-living increases or decreases may also be extended to those persons affected by the compensation schedule fixed by the commission. No cost-of-living increase or decrease granted to any person affected by the schedule shall exceed the uniform general increase or decrease provided for all other state employees by the general assembly. [Emphasis by underlining and bold face added.]

* * *

"[A]ll legislative authority not denied the General Assembly by the Constitution resides in it. Absent a constitutional limitation upon its powers, the General Assembly certainly may legislate as it wills, subject only to the limitations imposed by the

Constitution of the United States." State ex rel. Heimberger v. Board of Curators of University of Missouri, 188 S.W. 128, 131 (Mo. banc 1916); accord State ex inf. Danforth v. Merrell, 530 S.W.2d 209, 213 (Mo. banc 1975). "Article III, Section 36, [of the Missouri Constitution] forbids the 'withdrawal of money from the treasury, except in pursuance of appropriations made by law.' Absent an appropriation by the General Assembly approved by the Governor, therefore, the constitution forbids any expenditure of state revenues." Fort Zumwalt School District v. State of Missouri, 896 S.W.2d 918, 922 (Mo. banc 1995). The power of the General Assembly with respect to the public funds raised by general taxation, subject to constitutional limitations, is supreme. State ex rel. Davis v. Smith, 75 S.W.2d 828, 829-30 (Mo. 1934)(emphasis added).

In interpreting Article XIII, Section 3, "[t]he fundamental purpose of constitutional construction is to give effect to the intent of the voters who adopted the Amendment. [Citation omitted.] Traditional rules of construction dictate looking at words in the context of both the particular provision in which they are located and the entire amendment in which the provision is located." Keller v. Marion County Ambulance District, 820 S.W.2d 301, 302 (Mo. banc 1991). In construing a statute, significance and effect should, if possible, be attributed to every word, every phrase, sentence and part thereof, and words or phrases may be stricken out only in extreme cases. State ex rel. Smith v. Atterbury, 270 S.W.2d 399, 404 (Mo. banc 1954). Rules employed in construction of constitutional provisions are the same as those employed in construction of statutes. State ex rel. Upchurch v. Blunt, 810 S.W.2d 515, 516 (Mo. banc 1991).

The provision in subsection 8 of Article XIII, Section 3 states that the compensation shown in the Compensation Schedule represents the compensation for those officials subject to appropriation. Significance and effect should be given to every phrase in the constitution. To give meaning to the phrase "subject to appropriations", the compensation shown in the Compensation Schedule is subject to appropriation so that the amount shown in the Compensation Schedule is only to be paid if the amount is appropriated. If less than the amount shown in the Compensation Schedule is appropriated, then only the lesser amount may be paid. The language enacted by the voters provides the compensation shown in the Compensation Schedule is subject to appropriations and that language should be given effect.

There is no constitutional limitation upon the power of the General Assembly to appropriate less than the amount shown in the Compensation Schedule. More money than provided by appropriation may not be withdrawn from the state treasury to pay

the compensation for those officials. Therefore, if the General Assembly appropriates less money for the compensation of officials than the compensation shown in the Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", those officials are to be paid the lesser amount appropriated by the General Assembly rather than the amount shown in the Compensation Schedule.

## CONCLUSION

It is the opinion of this office that if the General Assembly appropriates less money for the compensation of officials than the compensation shown in the Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", those officials are to be paid the lesser amount appropriated by the General Assembly rather than the amount shown in the Compensation Schedule.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

# Appendix A
# Compensation Schedule
# (page 1 of 2)

## Judges

| | FY 98 Base | Differential | FY99[1] |
|---|---|---|---|
| Chief Justice, Supreme Court | $120,000 | $2,500 | |
| Supreme Court | $120,000 | | |
| Court of Appeals Judge | $112,000 | | |
| Circuit Judges | $105,000 | | |
| Associate Circuit Judges | $ 99,000 | | |

## General Assembly

| | FY 98 Salary | Differential | FY 99[2] Salary | Differential |
|---|---|---|---|---|
| Senator | $32,500 | | $35,000 | |
| Representative | $32,500 | | $35,000 | |
| Speaker of the House | $32,500 | $3,500 | $35,000 | $3,500 |
| President Pro Tem of the Senate | $32,500 | $3,500 | $35,000 | $3,500 |
| Speaker Pro Tem of the House | $32,500 | $2,500 | $35,000 | $2,500 |
| Majority Floor Leader of the House | $32,500 | $2,500 | $35,000 | $2,500 |
| Majority Floor Leader of the Senate | $32,500 | $2,500 | $35,000 | $2,500 |
| Minority Floor leader of the House | $32,500 | $2,500 | $35,000 | $2,500 |
| Minority Floor Leader of the Senate | $32,500 | $2,500 | $35,000 | $2,500 |
| Chair, House Budget Committee | $32,500 | $2,500 | $35,000 | $2,500 |
| Chair, Senate Appropriation Committee | $32,500 | $2,500 | $35,000 | $2,500 |

Per diem is to be indexed on the Federal standard (Department of Treasury - Internal Revenue Service)[3]
Mileage is to be indexed to the prevailing State of Missouri - Office of Administration rate as applied for all other state employees.[4]

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[1] FY99 (July 1, 1998) should be based on FY98 base + any periodic uniform general cost-of-living increases or decreases appropriated by the general assembly and signed by the Governor + differential, not to exceed the uniform general increase or decrease provided for all other state employees by the general assembly.

[2] FY99 (July 1, 1998) should be based on FY99 base + any periodic uniform general cost-of-living increases or decreases appropriated by the general assembly and signed by the Governor + differential, not to exceed the uniform general increase or decrease provided for all other state employees by the general assembly.

[3] The city of comparison for per diem is Jefferson City, Missouri.

[4] Standard rates are published in employee handbooks annually.

## Appendix A
## Compensation Schedule (page 2 of 2)

### Elected Officials

| | FY 98 Base | FY99[5] |
|---|---|---|
| Governor | 104,245.92 | |
| Lt. Governor | 66,780.00 | |
| Secretary of State | 83,621.04 | |
| Attorney General | 90,496.32 | |
| State Treasurer | 83,621.04 | |
| State Auditor | 83,621.04 | |

[5] FY99 (July 1, 1998) should be based on FY98 base + any periodic uniform general cost-of-living increases or decreases appropriated by the general assembly and signed by the Governor, not to exceed the uniform general increase or decrease provided for all other state employees by the general assembly.

COMPENSATION:
CONSTITUTIONAL LAW:
GENERAL ASSEMBLY:
STATE OFFICERS:

If the General Assembly disapproves by concurrent resolution the November 30, 1996, Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", Article XIII, Section 3 of the Missouri Constitution does not prohibit those officials listed in the Compensation Schedule from receiving compensation after July 1, 1997.

February 17, 1997

OPINION NO. 92-97

The Honorable Gracia Y. Backer
State Representative, District 20
State Capitol Building
Jefferson City, Missouri 65101

and

The Honorable Don Lograsso
State Representative, District 54
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Backer and Representative Lograsso:

Each of you has requested an opinion of this office in response to the following question:

> If the General Assembly disapproves by concurrent resolution the November 30, 1996, Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", are those officials listed in the Compensation Schedule prohibited by Article XIII, Section 3 of the Missouri Constitution from receiving compensation after July 1, 1997?

Article XIII, Section 3 of the Missouri Constitution creates a commission to be known as the "Missouri Citizen's Commission on Compensation for Elected Officials" (hereinafter referred to as the "Commission"). Subject to the provisions set forth in that constitutional section, the Commission prepares a schedule showing the compensation for elected state officials, members of the general assembly and judges except for municipal judges. The Commission issued a report dated November 30, 1996. A Compensation Schedule was attached to that report as Appendix A. The issue for consideration is whether those officials listed in the Compensation Schedule are prohibited by Article XIII, Section 3 from receiving compensation after July 1, 1997, if the General Assembly disapproves by concurrent resolution the Compensation Schedule attached to the Commission's report dated November 30, 1996.

Your question apparently arises as a result of language contained in Article XIII, Section 3. The relevant provisions of Section 3 state:

> **Section 3. Compensation of state elected officials, general assembly members and judges to be set by Missouri Citizens Commission on Compensation—members qualifications, terms, removal, vacancies, duties—procedure.** 1. Other provisions of this constitution to the contrary notwithstanding, in order to ensure that the power to control the rate of compensation of elected officials of this state is retained and exercised by the tax paying citizens of the state, after the effective date of this section no elected state official, member of the general assembly, or judge, except municipal judges, shall receive compensation for the performance of their duties other than in the amount established for each office by the Missouri citizen's commission on compensation for elected officials established pursuant to the provisions of this section. The term "compensation" includes the salary rate established by law, mileage allowances, per diem expense allowances.
>
> 2. There is created a commission to be known as the "Missouri Citizen's Commission on Compensation for Elected Officials". . . .
>
> * * *

8. The commission shall, beginning in 1996, and every two years thereafter, review and study the relationship of compensation to the duties of all elected state officials, all members of the general assembly, and all judges, except municipal judges, and shall fix the compensation for each respective position. The commission shall file its initial schedule of compensation with the secretary of state and the revisor of statutes no later than the first day of December, 1996, and by the first day of December each two years thereafter. The schedule of compensation shall become effective unless disapproved by concurrent resolution adopted by the general assembly before February 1 of the year following the filing of the schedule. Each schedule shall be published by the secretary of state as a part of the session laws of the general assembly and may also be published as a separate publication at the discretion of the secretary of state. The schedule shall also be published by the revisor of statutes as a part of the revised statutes of Missouri. The schedule shall, subject to appropriations, apply and represent the compensation for each affected person beginning on the first day of July following the filing of the schedule. In addition to any compensation established by the schedule, the general assembly may provide by appropriation for periodic uniform general cost-of-living increases or decreases for all employees of the state of Missouri and such cost-of-living increases or decreases may also be extended to those persons affected by the compensation schedule fixed by the commission. No cost-of-living increase or decrease granted to any person affected by the schedule shall exceed the uniform general increase or decrease provided for all other state employees by the general assembly.

* * *

10. Until the first day of July next after the filing of the first schedule by the commission, compensation of the persons affected by this section shall be that in effect on the effective date of this amendment.

> 11. Schedules filed by the commission shall be subject to referendum upon petition of the voters of this state in the same manner and under the same conditions as a bill enacted by the general assembly.

[Emphasis added.]

In construing constitutional provisions:

> . . . the instrument must be read as a whole, insofar as other parts may throw light on other parts thereof. . . . "If a literal interpretation of the language used in a constitutional provision would give it an effect in contravention of the real purpose and intent of the instrument as deduced from a consideration of all its parts, such intent must prevail over the literal meaning. ***" 12 C.J., Constitutional Law, § 44, p. 702; See, also, 16 C.J.S., Constitutional Law, § 16. State ex rel. City of Carthage v. Hackmann, 287 Mo. 184, 229 S.W. 1078. "Where the spirit and intent of the instrument can be clearly ascertained, effect should be given to it, and the strict letter should not control if the letter leads to incongruous results clearly not intended." State ex rel. Ward v. Romero, 17 N.M. 88, 100, 125 P. 617, 621.

State ex rel. Moore v. Toberman, 250 S.W.2d 701, 705 (Mo. banc 1952). "A constitutional provision should never be given a construction which would work . . . confusion and mischief unless no other reasonable construction is possible." Three Rivers Junior College District of Poplar Bluff v. Statler, 421 S.W.2d 235, 242 (Mo. banc 1967); accord Toberman, 250 S.W.2d at 705.

"Rules for the interpretation of statutes apply with equal force to the constitution." Spradlin v. City of Fulton, 924 S.W.2d 259, 262 (Mo. banc 1996). "[T]he law favors the construction of statutes which is in harmony with reason and common sense and which tends to avoid unreasonable and absurd results." In Interest of B.C.H., 718 S.W.2d 158, 162 (Mo. App. 1986). "It is presumed that in the enactment of laws, the legislature does not intend to enact absurd laws. . . . Statutory construction is favored that avoids unjust or unreasonable results. . . . [A] Court is obligated to ascertain the intent of the legislature from the language used and to give effect to that intent without arriving at an absurd result. The law favors statutory

construction that harmonizes with reason and that tends to avoid absurd results." David Ranken, Jr. Technical Institute v. Boykins, 816 S.W.2d 189, 192 (Mo. banc 1991).

In construing Article XIII, Section 3, we look to the section as a whole. Subsection 1 states in part: "[A]fter the effective date of this section no [enumerated officials] shall receive compensation for the performance of their duties other than in the amount established for each office by the [Commission]." Subsection 8 provides in part: The Compensation Schedule "shall, subject to appropriations, apply and represent the compensation for each affected person beginning on the first day of July following the filing of the schedule." However, subsection 8 states that "[t]he schedule of compensation shall become effective unless disapproved by concurrent resolution adopted by the general assembly before February 1 of the year following the filing of the schedule." Subsection 11 provides the Compensation Schedule is subject to referendum upon petition of the voters of the state. Subsections 8 and 11 recognize that the November 30, 1996, Compensation Schedule prepared by the Commission may be disapproved by the General Assembly or by the voters of this state.

If the General Assembly or voters exercise their constitutional right to disapprove the Compensation Schedule, the consequences of disapproval should not be unreasonable and absurd. The constitutional provision provides for the Compensation Schedule to not take effect if disapproved by the General Assembly or the voters. For the discretion to disapprove the Compensation Schedule to be meaningful, the consequences of disapproval should not work confusion and mischief.

Considering the constitutional section as a whole, we conclude that the section intends the Compensation Schedule to be subject to possible disapproval by the General Assembly or the voters. To interpret the section as requiring nothing more than a "rubber stamp" by the General Assembly or the voters in order to avoid an absurd and unreasonable result, creating confusion and mischief, would be inconsistent with the discretion vested in the General Assembly and the voters by the constitutional section. There is currently in place authority for compensation for the officials enumerated in Article XIII, Section 3. Subsection 10 of Article XIII, Section 3 provides that compensation to be in effect until the first day of July next after the filing of the first Compensation Schedule of the Commission. If the November 30, 1996, Compensation Schedule is disapproved by the General Assembly as provided in subsection 8, there is no Compensation Schedule prepared by the Commission in effect on July 1, 1997, so the compensation of the enumerated officials would be pursuant to the constitutional provisions and statutes that otherwise set their compensation.

CONCLUSION

It is the opinion of this office that if the General Assembly disapproves by concurrent resolution the November 30, 1996, Compensation Schedule prepared by the "Missouri Citizen's Commission on Compensation for Elected Officials", Article XIII, Section 3 of the Missouri Constitution does not prohibit those officials listed in the Compensation Schedule from receiving compensation after July 1, 1997.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

COUNTIES:
COUNTY EMPLOYEES:
NEPOTISM:
SHERIFFS:

A sheriff of a third class county appointed to complete the term of office of the previous sheriff who died does not violate Article VII, Section 6 of the Missouri Constitution, the nepotism provision, if he retains as a deputy sheriff his son who had been appointed as a deputy by the previous sheriff.

June 10, 1997

OPINION NO. 94-97

Stephen P. Sokoloff
Dunklin County Prosecuting Attorney
P. O. Box 864
Kennett, Missouri 63857

Dear Mr. Sokoloff:

This opinion is in response to your questions asking:

1. May a Sheriff of a third class county taking office by virtue of appointment to complete the term of office vacated by death of previous officeholder continue the employment of his son, who was appointment as deputy of the previous Sheriff?

2. May the new Sheriff, at the commencement of his own term, following the completion of the appointive term, continue the employment of his son as deputy?

You provide the following facts as being relevant to your questions:

> On October 31, 1996, Dunklin County Sheriff Jim Elliott, died while in office, leaving said office vacant. His term of office expires December 31, 1996. At the time of his death,

> Sheriff Elliott was the only candidate for election of the new term commencing January 1, 1997. As his death occurred prior to 9:00 a.m. on the Friday immediately preceding the election, each major party placed a name on the general election ballot for the position of Sheriff. Bob Holder was elected at the general election for the term commencing January 1, 1997. Upon Mr. Holder's election, the Dunklin County Commission appointed Mr. Holder to fill the vacancy left by Sheriff Elliott to serve in that capacity until the completion of that term on December 31, 1996.
>
> Ryan Holder, Bob Holder's son, was employed by Sheriff Elliott as a Deputy Sheriff and Jailer. That employment commenced July 1, 1994, and Deputy Holder has continued in that position . . . .

Article VII, Section 6 of the Missouri Constitution provides:

> **Section 6. Penalty for nepotism.** Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

In prior opinions, this office has concluded that a county official who retains as an employee a relative within the fourth degree, by consanguinity or affinity, which relative was employed by the prior officeholder, does not violate Article VII, Section 6 of the Missouri Constitution. In Opinion No. 73-89, a copy of which is enclosed. this office concluded that a county assessor who retains as an employee a relative within the prohibited degree, which relative was employed by the prior county assessor, does not violate the nepotism provision of the Missouri Constitution. In Opinion Letter No. 254, Hazel, 1975, a copy of which is enclosed, this office concluded that a member of the board of trustees of a third class county hospital was not guilty of nepotism if at the time of his election and during part or all of his term there was employed by the county hospital a relative within the prohibited degree who was employed prior to the time that the board member was elected to office.

The conclusions in the opinions discussed above are based on the language of Article VII, Section 6 that a violation occurs when the official "names or appoints to public office or employment." Where the employee-relative is already holding "public office or employment," the newly-elected or appointed officeholder is not naming or appointing the relative to public office or employment. See State v. Fletchall, 412 S.W.2d 423 (Mo. banc 1967).

In the situation about which you are concerned, the current sheriff's son was already employed as a deputy sheriff at the time the current sheriff took office. The current sheriff did not name or appoint his son as deputy sheriff. Therefore, consistent with the prior opinions of this office, the current sheriff retaining as a deputy his son who had been appointed by the previous sheriff does not violate the nepotism provision of the Missouri Constitution.

Your second question indicates concern that the conclusion above may only be applicable through the term to which the current sheriff was appointed. Your second question asks if the current sheriff may retain his son as a deputy in subsequent terms to which the current sheriff may be elected. Where the son was appointed as a deputy prior to the current sheriff taking office, the expiration of one term of office and the commencement of a new term does not have any impact on our conclusion.[1] The initial employment of the son as a deputy was by the previous sheriff and not the current sheriff. Therefore, we conclude that the current sheriff may retain as a deputy his son during any subsequent terms to which the current sheriff is elected.

As we stated in our prior opinions, pay increases or increases in other benefits incidental to the original employment do not result in the current sheriff violating the nepotism provision. However, if the current sheriff were to appoint his son to a distinctly different position, the nepotism provision of the Missouri Constitution would be violated.

## CONCLUSION

It is the opinion of this office that a sheriff of a third class county appointed to complete the term of office of the previous sheriff who died does not violate Article

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[1]We need not address whether Section 57.250, RSMo Supp. 1996, or Section 57.251, RSMo 1994, applies to the appointment of deputy sheriffs in third class counties, because our conclusion is the same regardless of which section is applicable.

VII, Section 6 of the Missouri Constitution, the nepotism provision, if he retains as a deputy sheriff his son who had been appointed as a deputy by the previous sheriff.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

March 3, 1997

OPINION LETTER NO. 101-97

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1994, for sufficiency as to form of an initiative petition relating to the amendment of Article VI of the Missouri Constitution by adopting one new section to be known as Section 34. A copy of the initiative petition which you submitted to this office on February 26, 1997, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

NEPOTISM:
UNIVERSITY OF MISSOURI:

The son of the head football coach at the University of Missouri may be appointed as an assistant football coach at that school without violating Article VII, Section 6 of the Missouri Constitution, the nepotism provision, when the head football coach is not involved in the hiring process.

March 13, 1997

OPINION NO. 104-97

The Honorable Ken Jacob
State Senator, District 19
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Jacob:

This opinion is in response to your question asking:

> Is the hiring of an employee by a public entity violative of the Missouri Constitution's prohibiting nepotism when the employee to be hired is the son of the employer's head football coach when some of the employee's duties will be in an administration line below such head coach but such head coach is not involved in the hiring process?

Based on the information you have provided, it is our understanding that the University of Missouri desires to hire an assistant football coach. The son of the present head football coach is under consideration for that position. Other persons in the athletic department have reviewed the people under consideration for the vacancy and have concluded that the son of the head football coach is the most desirable applicant. You have stated your question to indicate that the head football coach is not involved in the hiring process. The issue for consideration is whether the son of the head football coach at the University of Missouri may be employed as an assistant football coach at that school without violating Article VII, Section 6 of the Missouri

Constitution, the nepotism provision, when the head football coach is not involved in the hiring process.[1]

The nepotism provision of the Missouri Constitution, Article VII, Section 6, states:

> **Section 6. Penalty for nepotism.** Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

This office considered a similar issue with respect to Lincoln University in Opinion Letter No. 113, Frank, 1980, a copy of which is enclosed. The issue considered in that opinion was whether the spouse of the President of Lincoln University could be employed at Lincoln University assuming that the President had no function in the spouse being hired. This office concluded that the nepotism provision found in Article VII, Section 6 of the Missouri Constitution did not prohibit the employment by Lincoln University of the spouse of the President of Lincoln University. The statutes considered in the opinion provided for the Board of Curators of Lincoln University to appoint and remove, at discretion, the president, deans, professors, instructors and other employees of the University. Neither the President of Lincoln University nor any other officer or employee of Lincoln University had been given general authority to hire or fire employees of Lincoln University. Because the hiring of the spouse of the President was by the Board of Curators and not the President, this office concluded that there was no violation of the nepotism provision when the spouse of the President was hired by the University.

Article IX, Section 9(a) of the Missouri Constitution provides for the University of Missouri to be governed by a Board of Curators. Such section provides:

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[1]Our opinion only addresses the nepotism provision of the Missouri Constitution, Article VII, Section 6. Our opinion does not address any rules or regulations of the University of Missouri that may be applicable. Furthermore, we assume that the son of the head football coach is not related within the fourth degree, by consanguinity or affinity, to any official of the University except his father, the head football coach.

> **Section 9(a). State university–government by board of curators–number and appointment.** The government of the state university shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate.

Section 172.300, RSMo 1994, discusses the authority of the Board of Curators of the University of Missouri with respect to employees of that university. Such section states:

> **172.300. Employment of faculty and employees – compensation, retirement, death and disability plans. –** The curators may appoint and remove, at discretion, the president, deans, professors, instructors and other employees of the university; define and assign their powers and duties, and fix their compensation, and such compensation may include payments . . . .

Based on this provision, the Board of Curators has the authority to appoint employees of the University. We have been provided information showing that the Board of Curators has delegated the authority to appoint employees, with certain exceptions, to the President of the University of Missouri, and that the President has delegated such authority, with certain exceptions, to the Chancellor of each campus. However, we have been provided no information showing the delegation of the authority to hire an assistant football coach to the head football coach and we will assume that there has been no such delegation.

Under the facts presented, there has been no delegation of the hiring decision to the head football coach. Your question poses the situation where the head football coach is not involved in the hiring process. Because the head football coach is not the person hiring the assistant football coach, there is no violation of the nepotism provision when the University of Missouri hires the son of the head football coach as an assistant football coach.

## CONCLUSION

It is the opinion of this office that the son of the head football coach at the University of Missouri may be appointed as an assistant football coach at that school without violating Article VII, Section 6 of the Missouri Constitution, the nepotism provision, when the head football coach is not involved in the hiring process.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

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March 24, 1997

OPINION LETTER NO. 106-97

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1994. The statement which you have submitted is as follows:

> Shall Article VI of the Missouri Constitution be amended to permit counties, cities, towns and villages to regulate the size, number, height, placement, spacing, design and lighting of signs and billboards and to permit such local governments to require removal of non-conforming signs and billboards, provided such authority shall be limited by the free speech clauses of the state and federal constitutions and by federal law and the local governments must compensate for removal of signs and billboards if required by federal constitution or federal law?

See our Opinion Letter No. 101-97.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ABORTION:
PHYSICIANS:

Under current Missouri law a person performing an abortion by partially vaginally delivering a living fetus before intentionally killing the infant and completing the delivery may be charged with second degree murder under Section 188.035, RSMo 1994.

August 15, 1997

OPINION NO. 126-97

The Honorable Joe Heckemeyer
State Representative, District 160
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Heckemeyer:

This opinion is in response to your question asking:

> Is it murder in the second degree, under current Missouri law, for a person performing an abortion to partially vaginally deliver a living fetus before intentionally killing the infant and completing the delivery?[1]

Section 188.035, RSMo 1994, addresses the issue about which you are concerned.[2] Such section provides:

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[1]Your question only inquires about a charge of second degree murder. Therefore, we do not address whether the facts in a particular case might warrant a charge of first degree murder.

[2]Statutes relating to abortion often raise questions of constitutionality. See the discussion on the constitutionality of state statutes relating to abortions in Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). However, we do not in the process of issuing opinions address the constitutionality of Missouri statutes. See Gershman Investment Corporation v. Danforth, 517 S.W.2d 33, 35 (1974) ("[A]n Attorney General may not declare a statute unconstitutional. This power is reserved to

> **188.035. Death of child aborted alive deemed murder in second degree, when.**—Whoever, with intent to do so, shall take the life of a child aborted alive, shall be guilty of murder of the second degree.

Definitions relevant in interpreting Section 188.035 are found in Section 188.015, RSMo 1994. Definitions relevant to your inquiry include:

> **188.015. Definitions.**—Unless the language or context clearly indicates a different meaning is intended, the following words or phrases for the purposes of sections 188.010 to 188.130 shall be given the meaning ascribed to them:
>
> (1) **"Abortion"**, the intentional destruction of the life of an embryo or fetus in his or her mother's womb or the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying unborn child;
>
> * * *
>
> (6) **"Unborn child"**, the offspring of human beings from the moment of conception until birth and at every stage of its biological development, including the human conceptus, zygote, morula, blastocyst, embryo, and fetus;
>
> (7) **"Viability"**, that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems.

The question you pose refers to "partially vaginally deliver[ing] a living fetus before intentionally killing the infant." Section 188.015(7) defines "viability" as the stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems. Because you refer to the "living fetus" as an "infant," we presume the living fetus is viable,

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the courts by the Constitution.").

although the terms "living fetus" and "infant" are not defined in Chapter 188, RSMo. A viable fetus may be deemed a child for purposes of certain statutes. See In re Ruiz, 500 N.E.2d 935, 939 (Ohio Com. Pl. 1986). The term "child aborted alive" as used in Section 188.035, based on our presumption above, includes a viable living fetus as described in your question. Therefore, taking the life of the viable living fetus as described in your question may be second degree murder under Section 188.035.

## CONCLUSION

It is the opinion of this office that under current Missouri law a person performing an abortion by partially vaginally delivering a living fetus before intentionally killing the infant and completing the delivery may be charged with second degree murder under Section 188.035, RSMo 1994.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

CONCEALED WEAPONS: A law enforcement officer, authorized by
POLICE: Section 70.820, RSMo, as amended by Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills Nos. 69 & 179 and House Committee Substitute for House Bill No. 669, 89th General Assembly, First Regular Session (1997) to arrest certain persons at any place within this state, is authorized to carry a concealed weapon at any place within this state.

August 28, 1997

OPINION NO. 127-97

The Honorable W. Craig Hosmer
State Representative, District 138
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Hosmer:

This opinion is in response to your question asking:

> Does a certified, commissioned law enforcement or peace officer's privilege of carrying a concealed weapon extend to a statewide privilege as a result of the passage of HB 69 et al?

The Missouri General Assembly amended Section 70.820, RSMo, in Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills Nos. 69 & 179 and House Committee Substitute for House Bill No. 669, 89th General Assembly, First Regular Session (1997) (hereinafter "House Bill No. 69"). House Bill No. 69 added as subsection 6 to Section 70.820 the following:

> 6. In addition to the powers prescribed in subsections 1 and 5 of this section, section 544.216, RSMo, and any other arrest powers, a law enforcement officer or federal law enforcement officer as defined in subsection 8 of this section, may arrest on view, and without a warrant, <u>at any place within this state</u>, any person the officer sees asserting

> physical force or using forcible compulsion for the purpose of causing or creating a substantial risk of death or serious physical injury to any person or any person the officer sees committing a dangerous felony as defined in section 556.061, RSMo. Any such action shall be deemed to be within the scope of the officer's employment. [Emphasis added.]

Pursuant to this newly-added subsection, law enforcement officers, under certain circumstances, have arrest powers at any place within the state.

Section 571.030, RSMo, as amended by House Substitute for Senate Substitute for Senate Bill No. 367, 89th General Assembly, First Regular Session (1997), makes carrying a concealed weapon a crime but provides exemptions for certain persons. Those exempted in subsection 2(1) of Section 571.030 are:

> (1) All state, county and municipal law enforcement officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

In Opinion No. 89-96, issued February 5, 1996, this office addressed a question concerning police officers carrying concealed weapons outside of their jurisdiction. This office concluded that such officers did not violate Section 571.030, RSMo Supp. 1995, by carrying concealed weapons outside of their jurisdictions so long as the officers were performing official law enforcement business; however, such officers were subject to Section 571.030 while outside their jurisdictions on other than official law enforcement business.

Opinion No. 89-96 was based on the statutes in effect at the time of the opinion and relevant court cases including State v. Owen, 258 S.W.2d 662 (Mo. 1953) and State v. Henderson, 660 S.W.2d 373 (Mo. App. E.D. 1983). The cases emphasized that when a law enforcement officer was outside his jurisdiction on other than official law enforcement business, the officer could not be called upon to perform law enforcement duties. In State v. Owen, supra, the court explained:

> When within the territorial limits of his own county, the sheriff or his commissioned deputy may be called upon at any time to perform duties which may require the use or display of the weapons listed by this statute. But when such a deputy sheriff commissioned as above is on business of his own and in another county hundreds of miles from the county wherein he has deputy sheriff authority, and where he could not be called upon under any circumstances to conserve the peace or execute process or make arrests or use deadly weapons there is no logical reason whatever for the application of the exception. [Emphasis added.]

Id. at 665. Because of the statutory amendment to Section 70.820 by House Bill No. 69, these cases are no longer applicable. A law enforcement officer may now arrest certain persons at any place within this state. Because of the statutory amendment to Section 70.820 by House Bill No. 69, we are withdrawing Opinion No. 89-96.

As a result of the addition of subsection 6 to Section 70.820 by House Bill No. 69, a law enforcement officer, under certain circumstances, may arrest at any place within this state. Therefore, a law enforcement officer may be performing law enforcement duties at any place within this state. Because such law enforcement officer may be performing official duties at any place within this state, such law enforcement officer is authorized to carry a concealed weapon at any place within this state.

## CONCLUSION

It is the opinion of this office that a law enforcement officer, authorized by Section 70.820, RSMo, as amended by Conference Committee Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills Nos. 69 & 179 and House Committee Substitute for House Bill No. 669, 89th General Assembly, First Regular Session (1997) to arrest certain persons at any place within this state, is authorized to carry a concealed weapon at any place within this state.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

SCHOOLS:
SCHOOL BOARD MEETINGS:
SUNSHINE LAW:
VOTES/VOTING:

(1) The vote by a school board to hire, fire, promote or discipline an employee of the school district which vote must be made available to the public pursuant to Section 610.021(3), RSMo Supp. 1996, should disclose how each member of the school board cast his or her vote, and (2) the school board need not disclose the information which was considered by the board prior to the vote being taken.

July 22, 1997

OPINION NO. 129-97

The Honorable Timothy P. Green
State Representative, District 73
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Green:

This opinion is in response to your questions asking:

> Shall individual board member's closed votes from closed session meetings regarding personnel, Section 610.021 (3) R.S.Mo., be recorded and made public? If so, does this require that all information, public records, and Board minutes upon which such votes are decided to also be made public?

The information you included with your opinion request indicates your questions arise with respect to a school district.

Section 610.021(3), RSMo Supp. 1996, to which your questions refer, provides:

> **610.021. Closed meetings and closed records authorized when, exceptions.** —Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

* * *

> (3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term **"personal information"** means information relating to the performance or merit of individual employees; [Emphasis by underlining added.]

* * *

In Missouri Attorney General Opinion No. 30-88, this office considered a similar issue with respect to the disclosure required by Section 610.021, RSMo Supp. 1987, relating to the disclosure of any vote relating to litigation. Subsection (1) of Section 610.021, RSMo Supp. 1987, considered in that opinion, provided:

> (1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any vote relating to litigation involving a public governmental body shall be made public upon final disposition of the matter voted upon provided however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record; [Emphasis added.]

In considering the disclosure required under such subsection (1), this office stated on page 3 of the opinion:

> The new statute requires that "any vote relating to litigation involving a public governmental body shall be made public." If strictly construed, this language might indicate that only the number of votes cast for and against an unnamed proposition need be made public. The legislative policy statement prohibits such a narrow construction. "The standard rule of construction calls for a statute to be given a reasonable interpretation in light of the legislative objective." . . . For a vote to be truly "public," a citizen examining the records of the public governmental body is entitled to know as much as if he observed the vote being taken in a public meeting. The word "vote," as used in Section 610.021(1), RSMo Supp. 1987, should be understood to include the proposition voted upon, any matter or material incorporated or referred to within the proposition, and a means of discerning how each member of the public governmental body case his vote, all of which would be available to someone attending a public meeting. [Emphasis added.]

The discussion in Opinion No. 30-88 was considered by the Missouri Court of Appeals, Eastern District, in Tuft v. City of St. Louis, 936 S.W.2d 113, 118 (Mo. App. E.D. 1996). In that case, while the court quoted the portion of Opinion No. 30-88 highlighted above by underlining, the court deemed it unnecessary to determine whether that portion of the opinion quoted above was correct. Following the reasoning of Opinion No. 30-88, we conclude that the provision of Section 610.021(3), RSMo Supp. 1996, requiring "any vote on a final decision" to be made available to the public includes disclosing how each member of the school board voted.

Further support for this conclusion is found in McQuillin Mun Corp § 13.45 (3rd Ed):

> Two principal reasons may be suggested in favor of the requirement that whenever a vote is taken by a local legislative body on a certain proposition, the yeas and nays must be taken and recorded. First, the most important is to obtain a definite and accurate record of the corporate action in order to determine whether all of the mandatory provisions of the charter have been observed. Only in this way may it be ascertained whether the particular act is legal

> or illegal. Second, another purpose is to make the members of the body feel the responsibility of their action and to compel each member to bear his or her share in the responsibility by making a permanent written record of his or her action which should not be afterwards open to dispute. The inhabitants of the municipality are, as of right, entitled to know clearly the act and vote of every member, of their agents and servants, on every proposition relating to public duties, and a record of such acts and votes should be plainly made in a permanent form so that every inhabitant may have definite information.

In response to your first question, we conclude that the vote to be made available to the public pursuant to Section 610.021(3) should disclose how each member of the school board cast his or her vote.

Your second question asks if Section 610.021(3) requires that all information, public records, and board minutes upon which such votes are decided are to be made public. Based on the attachments to your opinion request, we understand when you refer to "information, public records, and board minutes," you are referring to information which was considered by the board prior to the vote being taken.[1]

Section 610.021(3) only requires "any vote on a final decision" to be made available to the public. The primary rule of statutory construction is to ascertain the intent of the legislature by considering the plain and ordinary meanings of the words used in the statute. Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915, 917 (Mo. banc 1993). The statute requires "any vote on a final decision" to be made available to the public and does not require information which was considered by the board to be made available.

In Tuft v. City of St. Louis, supra, the court addressed Section 610.021(1), RSMo 1994, which required "any minutes or vote relating to litigation involving a public governmental body" to be made public upon final disposition of the matter voted upon. The court concluded "minutes" and "vote" were all that was required to be made public pursuant to Section 610.021(1). The court stated:

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[1] In this opinion we only address what information is required to be made available to the public by Section 610.021(3). We do not address what information is public under other statutory provisions.

> The primary rule of statutory construction is to ascertain the legislative intent from the statute's language, to give effect to that intent if possible, consider the words in their plain and ordinary meaning, and when the language is unambiguous, the reviewing court is afforded no room for construction. *Brownstein v. Rhomberg-Haglin & Assoc. Inc.*, 824 S.W.2d 13, 15 (Mo. banc 1992). The terms "vote" and "minutes" are not ambiguous and the settlement agreement is neither a vote nor minutes. If the legislature intended that settlement agreements not required to be the subject of a public vote be disclosed, it presumably would have said so. Reporter's interpretation of "minutes or vote" as including a settlement agreement would be more than a liberal construction, it would amount to a substantial expansion of the statute. This is beyond our province.

Id. at 118-119. Consistent with this court decision, requiring more than the "vote" to be made available to the public pursuant to Section 610.021(3) would be a substantial expansion of the statute. Therefore, in answer to your second question, we conclude that Section 610.021(3) does not require the school board to disclose information which was considered by the board prior to the vote being taken.

## CONCLUSION

It is the opinion of this office that (1) the vote by a school board to hire, fire, promote or discipline an employee of the school district which vote must be made available to the public pursuant to Section 610.021(3), RSMo Supp. 1996, should disclose how each member of the school board cast his or her vote, and (2) the school board need not disclose the information which was considered by the board prior to the vote being taken.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

ASSESSORS: A county assessor commencing a term of office on September 1, 1997 whose compensation is based on Section 53.082, RSMo, is entitled to any additional compensation resulting from the enactment of Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Bill No. 11, 89th General Assembly, First Regular Session (1997) beginning September 1, 1997.

COMPENSATION:

TERM OF OFFICE:

August 26, 1997

OPINION NO. 137-97

Wm. Page Bellamy
Lafayette County Prosecuting Attorney
P. O. Box 59
Lexington, Missouri 64067

Dear Mr. Bellamy:

This opinion is in response to your question asking which county officials, if any, are entitled to have their salaries calculated as of September 1, 1997 on the new salary schedules enacted by Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Bill No. 11, 89th General Assembly, First Regular Session (1997) (hereinafter "Senate Bill No. 11"). We understand you are particularly concerned about the salary of the county assessor who commences a new term of office on September 1, 1997.

Senate Bill No. 11 amended numerous statutory sections relating to the compensation of county officials. Section 53.082, RSMo, relating to the compensation of the county assessor in certain counties was one of the sections amended. Section 53.082, RSMo 1994, provided in relevant part:

> **53.082. Compensation—training program, attendance required, when, expenses, compensation (second, third and fourth class counties).** —1. The county assessor in any county, other than in a first class county, shall receive an annual salary computed as set forth in the following schedule provided in this subsection. The

assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. The provisions of this section shall not permit or require a reduction in the amount of compensation received by any person holding the office of assessor on January 1, 1988.

| Assessed Valuation | Salary |
|---|---|
| $0 to 20,000,000 | $25,900 |
| 20,000,001 to 25,000,000 | 26,400 |
| 25,000,001 to 30,000,000 | 26,900 |
| 30,000,001 to 40,000,000 | 28,900 |
| 40,000,001 to 50,000,000 | 29,400 |
| 50,000,001 to 55,000,000 | 29,900 |
| 55,000,001 to 60,000,000 | 30,400 |
| 60,000,001 to 65,000,000 | 30,900 |
| 65,000,001 to 70,000,000 | 31,400 |
| 70,000,001 to 100,000,000 | 32,400 |
| 100,000,001 to 150,000,000 | 32,900 |
| 150,000,001 to 200,000,000 | 33,400 |
| 200,000,001 to 250,000,000 | 33,900 |
| 250,000,001 to 300,000,000 | 34,400 |
| 300,000,001 to 350,000,000 | 34,900 |
| 350,000,001 to 450,000,000 | 35,400 |
| 450,000,001 to 550,000,000 | 35,900 |
| 550,000,001 to 750,000,000 | 36,400 |
| 750,000,001 or more | 36,900 |

* * *

Section 53.082 as enacted by Senate Bill No. 11 provides in relevant part:

53.082. 1. The county assessor in any county, other than in a first classification county, shall receive an annual salary computed as set forth in the following schedule provided in this subsection. The assessed valuation factor shall be the amount thereof as shown for the year next preceding the computation. The provisions of this section shall not permit or require a reduction in the amount of compensation being paid for the office of assessor on September 1, 1997.

| Assessed Valuation | Salary |
|---|---|
| 18,000,000 to 40,999,999 | 29,000 |
| 41,000,000 to 53,999,999 | 30,000 |
| 54,000,000 to 65,999,999 | 32,000 |
| 66,000,000 to 85,999,999 | 34,000 |
| 86,000,000 to 99,999,999 | 36,000 |
| 100,000,000 to 130,999,999 | 38,000 |
| 131,000,000 to 159,999,999 | 40,000 |
| 160,000,000 to 189,999,999 | 41,000 |
| 190,000,000 to 249,999,999 | 41,500 |
| 250,000,000 to 299,999,999 | 43,000 |
| 300,000,000 or more | 45,000 |

2. The compensation for county assessors in second, third and fourth classification counties for the term of office beginning September 1, 1997, shall be calculated pursuant to the salary schedule in this section using the percentage increase approved by the county salary commission when establishing the compensation for the office of county assessor at the salary commission meeting in 1997. This salary shall become effective on September 1, 1997.

* * *

The effect of the statutory amendment is to provide in most situations a higher salary for the county assessor. For example, with an assessed valuation of $60,000,000, under Section 53.082, RSMo 1994, the salary amount shown is $30,400. However, under Section 53.082 as enacted by Senate Bill No. 11, the salary amount shown is $32,000. The effective date of Senate Bill No. 11 is August 28, 1997. See Article III, Section 29 of the Missouri Constitution and Section 1.130, RSMo 1994.

Article VII, Section 13 of the Missouri Constitution provides:

**Section 13. Limitation on increase of compensation and extension of terms of office.** The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended. [Emphasis added.]

"A 'term of office' uniformly designates a fixed and definite period of time." Smith v. Pettis County, 136 S.W.2d 282, 288 (Mo. 1940). "Each official term stands by itself. The constitutional provision forbidding an increase or decrease of compensation during a term of office has reference to the period fixed as a term by statute only, and in no wise refers to the individual who may incidently happen to be the incumbent for more than one term." State ex rel. Emmons v. Farmer, 196 S.W. 1106, 1109 (Mo. banc 1917).

Turning to the county assessor, Section 53.010, RSMo 1994, provides that the term of office of county assessors commences on September 1 after their election. Such section provides in relevant part:

> **53.010. Election—term—residency—exception, St. Louis city.**—1. At the general election in the year 1948 and every four years thereafter the qualified voters in each county in this state shall elect a county assessor. Such county assessors shall enter upon the discharge of their duties on the first day of September next after their election, and shall hold office for a term of four years, and until their successors are elected and qualified, unless sooner removed from office; provided, that this section shall not apply to the city of St. Louis. The assessor shall be a resident of the county from which such person was elected. [Emphasis added.]

* * *

Pursuant to Section 53.010, county assessors elected in November, 1996 commence a new term of office on September 1, 1997.

Article VII, Section 13 of the Missouri Constitution provides the compensation of a county assessor shall not be increased during the term of office. In the situation about which you are concerned, the term of office of the county assessor elected in November, 1996 does not commence until September 1, 1997 pursuant to Section 53.010. Senate Bill No. 11 is effective August 28, 1997 which is prior to the county assessor's term of office commencing on September 1, 1997. Therefore, any increase in the compensation of a county assessor resulting from the enactment of Senate Bill

No. 11 is not prohibited by Article VII, Section 13.[1] This conclusion is consistent with subsection 2 of Section 53.082 as enacted by Senate Bill No. 11 wherein the General Assembly states that the salary schedule in Senate Bill No. 11 shall be used to calculate the compensation of county assessors beginning September 1, 1997.

## CONCLUSION

It is the opinion of this office that a county assessor commencing a term of office on September 1, 1997 whose compensation is based on Section 53.082, RSMo, is entitled to any additional compensation resulting from the enactment of Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Bill No. 11, 89th General Assembly, First Regular Session (1997) beginning September 1, 1997.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

[1]Section 50.333, RSMo, creates a county salary commission in every nonchartered county. The salary commission establishes the compensation for county officers to be paid to such officers during the next term of office. It has been the long-standing policy of this office not to opine on the validity of or interpret action taken by the county salary commission in a particular county. Therefore, this opinion addresses the application of Article VII, Section 13 to any increase in compensation for county assessors resulting from the enactment of Senate Bill No. 11, but we do not address the validity of or interpret action taken by a county salary commission in a particular county.

CRIMINAL LAW:
POLICE:
POLICE RECORDS:
SHERIFFS:
SUNSHINE LAW:

Pursuant to subsection 3 of Section 566.617, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 56, 89th General Assembly, First Regular Session (1997), a local law enforcement agency shall provide to any person upon request a complete list of the names and addresses of sex offenders registered within such agency's jurisdiction as well as the crime for which each offender was convicted.

September 5, 1997

OPINION NO. 145-97

J. Ronald Carrier
Greene County Prosecuting Attorney
Greene County Judicial Facility
1010 Boonville Avenue
Springfield, Missouri 65802-3804

Dear Mr. Carrier:

This opinion is in response to your question asking if a local law enforcement agency should provide to any person upon request a complete list of the names and addresses of sex offenders registered within such agency's jurisdiction as well as the crime for which each offender was convicted. Your question arises as a result of the enactment of two bills by the General Assembly in 1997 which addressed this issue: 1) Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 56, 89th General Assembly, First Regular Session (hereinafter "Senate Bill No. 56"), and 2) House Bill No. 883, 89th General Assembly, First Regular Session (hereinafter "House Bill No. 883"). Both bills were effective August 28, 1997.

Senate Bill No. 56, among other changes, repealed Section 566.617, RSMo 1994, and enacted a new section with the same number. Section 566.617, as enacted by Senate Bill No. 56, provides:

> 566.617. 1. Except as provided in subsection 3 of this section, the statements, photographs, and fingerprints required by sections 566.600 to 566.625 shall not be subject to the provisions of chapter 610, RSMo, and are not public records as defined in section 610.010, RSMo, and shall be available [only] to courts, prosecutors and law enforcement agencies.
>
> 2. Except as provided in subsection 3 of this section, the statements, photographs, and fingerprints required by sections 566.600 to 566.625 shall not be subject to the provisions of chapter 610, RSMo, and are not public records as defined in section 610.010, RSMo, and shall not be open to inspection by the public or any person, other than a regularly employed peace officer or law enforcement officer.
>
> 3. Notwithstanding any provision of law to the contrary, the local law enforcement agency shall provide a complete list of the names and addresses of each offender registered within such agency's jurisdiction as well as the crime for which such offender was convicted to any person upon request.

The words added to Section 566.617 by Senate Bill No. 56 are highlighted by underlining and the word deleted is shown in brackets.

Sections 566.600 to 566.625, RSMo 1994 and Supp. 1996, comprised the sex offender registration law. House Bill No. 883 repealed Sections 566.600 to 566.625, RSMo 1994 and Supp. 1996, and enacted similar sections numbered Sections 589.400 to 589.425. Section 589.417, as enacted by House Bill No. 883, provides:

> 589.417. 1. The statements, photographs and fingerprints required by sections 589.400 to 589.425 shall not be subject to the provisions of chapter 610, RSMo, and are not public records as defined in section 610.010, RSMo, and shall be available only to courts, prosecutors and law enforcement agencies.

> 2. The statements, photographs and fingerprints required by sections 589.400 to 589.425 shall not be subject to the provisions of chapter 610, RSMo, and are not public records as defined in section 610.010, RSMo, and shall not be open to inspection by the public or any person, other than a regularly employed peace officer or law enforcement officer.

Section 589.417, as enacted House Bill No. 883, is the same as Section 566.617, RSMo 1994, except for section number references.

There are two statutes enacted at the same legislative session dealing with similar topics. In interpreting statutes, courts strive both to implement the policy of the legislature and to harmonize all provisions of the statutes. 20th & Main Redevelopment Partnership v. Kelley, 774 S.W.2d 139 (Mo. banc 1989). The principle that statutes should be construed harmoniously when they relate to the same subject matter is all the more compelling when statutes are passed in the same legislative session. State, Department of Labor and Industrial Relations, Division of Labor Standards v. SKC Electric, Inc., 936 S.W.2d 802 (Mo. banc 1997).

In the situation about which you are concerned, the changes by Senate Bill No. 56 and House Bill No. 883 can be harmonized. The sex offender registration law formerly contained in Sections 566.600 to 566.625 is now set forth as a result of House Bill No. 883 in Sections 589.400 to 589.425. Section 589.417, as enacted by House Bill No. 883, provides that statements, photographs and fingerprints required by the sex offender registration law are not available to the public.[1] Section 566.617, as enacted by Senate Bill No. 56, likewise provides that statements, photographs and fingerprints are not available to the public. However, subsection 3 of Section 566.617 provides a local law enforcement agency shall provide to any person upon request a complete list of the names and addresses of sex offenders registered within such agency's jurisdiction as well as the crime for which each offender was convicted. Harmonizing the provisions enacted by the two bill, statements, photographs and

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[1]Pursuant to Section 589.407, as enacted by House Bill No. 883, a "statement" includes the name, address, social security number and phone number of the person, the place of employment of such person, the crime which requires registration, the date and place of such crime, the date and place of the conviction or plea regarding such crime, the age and gender of the victim at the time of the offense and whether the person successfully completed the Missouri sexual offender program pursuant to Section 589.040, if applicable.

fingerprints are not available to the public; however, a complete list of names, addresses and crimes is available to any person upon request.[2]

Furthermore, effect should be given to the changes enacted by each of the two bills. Missouri Attorney General Opinion No. 194, Ratcliff, 1978, a copy of which is enclosed, at page 4. In the situation about which you are concerned, House Bill No. 883 reenacts the language of Section 566.617 without change, except for section number references. Senate Bill No. 56 reenacts such section with changes and, among other changes, adds as subsection 3 the provision for a local law enforcement agency to provide to any person upon request a complete list of the names and addresses of sex offenders registered within such agency's jurisdiction as well as the crime for which each offender was convicted. Subsection 3 is a change from prior law and such change by the General Assembly should be given effect.

## CONCLUSION

It is the opinion of this office that pursuant to subsection 3 of Section 566.617, RSMo, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 56, 89th General Assembly, First Regular Session (1997), a local law enforcement agency shall provide to any person upon request a complete list of the names and addresses of sex offenders registered within such agency's jurisdiction as well as the crime for which each offender was convicted.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

[2]We do not address which offenders should be shown on the list. Particularly, we do not address whether those offenders who received a suspended imposition of sentence should be shown on the list.

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

September 29, 1997

OPINION LETTER NO. 153-97

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo, as enacted by House Committee Substitute for Senate Bill No. 132, 89th General Assembly, First Regular Session (1997), for sufficiency as to form of an initiative petition relating to a proposed law adding seven new sections to Chapter 578, RSMo. A copy of the initiative petition which you submitted to this office on September 22, 1997, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

October 16, 1997

OPINION LETTER NO. 161-97

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

You have submitted to us a summary statement prepared pursuant to Section 116.334, RSMo, as enacted by House Committee Substitute for Senate Bill No. 132, 89th General Assembly, First Regular Session (1997). The summary statement which you have submitted is as follows:

> Shall a statute be enacted making it a class D felony to bait or fight animals; permit such activities on premises you control; or promote, conduct, stage, advertise or collect fees for such activities; and making it a class A misdemeanor to knowingly attend baiting or fighting of animals; knowingly sell, offer for sale, or transport animals for such purposes; own, possess, manufacture or deal in cockfighting implements; bear wrestle; permit bear wrestling on premises you control; promote, conduct, stage, advertise, or collect fees for bear wrestling; or market, possess, train, or surgically alter a bear for bear wrestling?

See our Opinion Letter No. 153-97.

Pursuant to Section 116.334, we approve the legal content and form of the proposed statement. Since our review of the statement is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

October 16, 1997

OPINION LETTER NO. 162-97

The Honorable Margaret Kelly, CPA
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor Kelly:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, as enacted by House Committee Substitute for Senate Bill No. 132, 89th General Assembly, First Regular Session (1997). The fiscal note summary which you have submitted is as follows:

> The estimated fiscal impact of this proposed measure on state and local governments is $0.

See our Opinion Letter No. 153-97.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

P.O. Box 899
(573) 751-3321

November 13, 1997 OPINION LETTER NO. 169-97

The Honorable Rebecca McDowell Cook
Missouri Secretary of State
State Capitol Building
Jefferson City, MO 65101

Dear Secretary Cook:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo, as enacted by House Committee Substitute for Senate Bill No. 132, 89th General Assembly, First Regular Session (1997) (hereinafter "Senate Bill No. 132"), for sufficiency as to form of an initiative petition relating to a proposed law adding seven new sections to Chapter 578, RSMo. A copy of the initiative petition which you submitted to this office on November 3, 1997, is attached for reference.

We conclude the petition must be rejected as to form. The petition contains language indicating the petition is being paid for and circulated by "Missourians Against Cockfighting." Section 116.040, RSMo, as enacted by Senate Bill No. 132, sets forth the form of an initiative petition. The statutory form does not provide for the name of the group paying for or circulating the petition to be set forth on the petition form. The courts do not condone deviations from the statutory form and do not condone the inclusion of extraneous materials. See Buchanan v. Kirkpatrick, 615 S.W.2d 6, 12 (Mo. banc 1981). Because of the references to "Missourians Against Cockfighting" on the petition, we conclude the petition must be rejected as to form.

Because of our rejection of the form of the petition for the reason stated above, we have not reviewed the petition to determine if additional deficiencies exist.

Very truly yours,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL

JEFFERSON CITY
65102

P.O. Box 899
(573) 751-3321

November 21, 1997

OPINION LETTER NO. 174-97

The Honorable Margaret Kelly, CPA
Missouri State Auditor
State Capitol Building
Jefferson City, MO 65101

Dear Auditor Kelly:

You have submitted to us a fiscal note and fiscal note summary prepared pursuant to Section 116.175, RSMo, as enacted by House Committee Substitute for Senate Bill No. 132, 89th General Assembly, First Regular Session (1997). The fiscal note summary which you have submitted is as follows:

> The estimated fiscal impact of this proposed measure on state and local governments is $0.

See our Opinion Letter No. 169-97 which rejected the initiative petition as to form.

Pursuant to Section 116.175, we approve the legal content and form of the fiscal note summary. Since our review of the fiscal note summary is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view regarding the objectives of its proponents.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

Enclosure